TEXAS REGISTER

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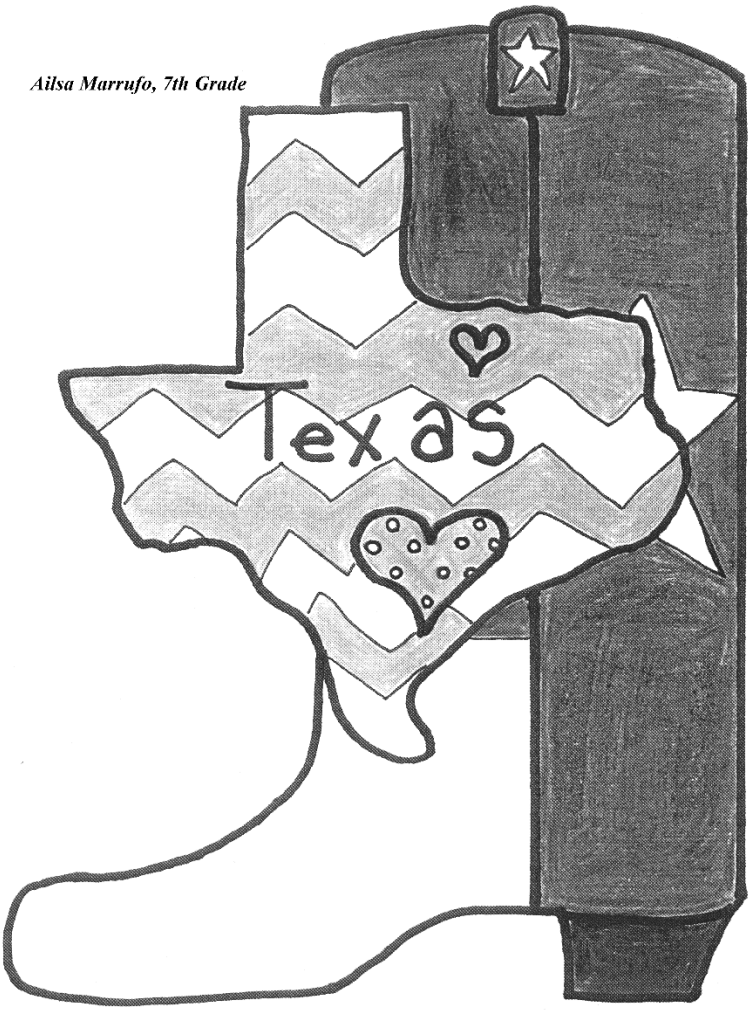

Ailsa Marrufo, 7th Grade

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

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

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In This Issue

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-0274-KP

Requestor:

The Honorable Bob Hall

Chair, Committee on Agriculture

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a groundwater conservation district may define "agricultural crop" as "food or fiber commodities grown for resale of commercial purposes that provide food, clothing, or animal feed" and utilize that definition to determine the applicable fee rate for "irrigating agricultural crops" (RQ-0274-KP)

RQ-0275-KP

Requestor:

The Honorable Russell D. Thomason

Eastland County Criminal District Attorney

100 West Main, Suite 204

Eastland, Texas 76448

Re: Whether the same individual may serve as city manager and as police chief in a home-rule municipality (RQ-0275-KP)

Briefs requested by March 25, 2019

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

TRD-201900678
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: February 26, 2019

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Opinions

Opinion No. KP-0238

The Honorable Dana Norris Young

Cherokee County Attorney

Post Office Box 320

Rusk, Texas 75785

Re: Application of Government Code section 573.062, the nepotism continuous-employment exception, to a tax assessor-collector's sister-in-law (RQ-0243-KP)

S U M M A R Y

Section 573.041 of the Government Code prohibits a public official from employing a person who is related to the public official by the specified degree of consanguinity or affinity. Section 573.062 excepts persons employed in a position for a specified continuous period of time prior to a relative's election or appointment to public office.

To the extent the tax office employs the sister-in-law in her current position for one year prior to the appointment of her relative as county tax assessor-collector, the sister-in-law's service satisfies the requirements under section 573.062 and her continued employment does not violate chapter 573 of the Government Code.

Opinion No. KP-0239

The Honorable Matthew A. Mills

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: Authority of a county to refund penalties and interest paid by taxpayers in certain circumstances (RQ-0244-KP)

S U M M A R Y

Subsections 33.011(a)(1), (a)(3), and (d) of the Tax Code permit a taxing unit under some circumstances to waive penalties and interest charged on delinquent taxes based on an act or omission of the taxing unit, or a formerly-correct address for payment, if certain requirements are met and the taxing unit receives a timely submitted written request for the waiver.

To the extent Hood County failed to mail a tax bill despite the County's possession of the taxpayer's mailing address, a court could conclude that the taxes are not yet delinquent, in which case the statutory deadline in subsection 33.011(d) for submitting the waiver request has not passed. To the extent Hood County mailed the tax bills in question such that a waiver of penalties and interest under section 33.011 is foreclosed, article III, subsection 52(a) of the Texas Constitution likely precludes the County from reimbursing taxpayers from its general fund for the amount of the penalties and interest.

Opinion No. KP-0240

The Honorable Natalie Cobb Koehler

Bosque County Attorney

Post Office Box 215

Meridian, Texas 76665

Re: Whether a commissioners court has a duty to maintain public roads (RQ-0245-KP)

S U M M A R Y

A court would likely conclude that a county has a duty to maintain a road, remove obstacles, and regulate gates only if the road has been laid out as a county road by law and has not been discontinued.

A court would also likely conclude that when a county is not a party to litigation between private landowners, fact findings recited in the judgment rendered in that litigation may affect private rights but do not establish a county duty to maintain a road or remove a gate from the litigated road.

Opinion No. KP-0241

The Honorable James White

Chair, Committee on Corrections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Standards courts apply when balancing the rights of the State against the fundamental rights of parents to raise their children free from government intrusion (RQ-0258-KP)

S U M M A R Y

The Due Process Clause of the Fourteenth Amendment protects certain fundamental parental rights, including the right of parents to make decisions concerning the care, custody, and control of their children, to direct the upbringing and education of their children, the right to make medical decisions on behalf of their children, and, in conjunction with the First Amendment, to guide the religious future and education of their children.

Courts review governmental infringements on fundamental rights protected by the Due Process Clause under strict scrutiny, requiring that the statute serve a compelling state interest and be narrowly tailored to achieve that interest.

In addressing child custody disputes between parents or in instances of abuse and neglect of a child, the Legislature has established the standard by which courts must resolve those disputes. Pursuant to section 153.002 of the Family Code, the best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child.

A court may not permanently and irrevocably terminate parental rights absent clear and convincing evidence of the allegations supporting the termination.

In evaluating parent-child relationships before making decisions about access to the child, courts presume that fit parents act in the best interests of their children and refrain from imposing their own judgments in lieu of a fit parent's decision regarding what is in the best interest of the child.

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

TRD-201900684
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: February 26, 2019

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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.15

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.15, Integrated Housing Rule. The purpose of the revision is to correct an incorrect citation to a regulation.

Tex. Gov't Code §2001.0045(b) does apply to the rule being proposed and no exceptions are applicable. However, the rule already exists and the correction is only administrative in nature. There are no costs associated with this proposed rule action, therefore no costs or impacts warrant a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the proposed amendment will be in effect:

1. The amended rule does not create or eliminate a government program, but relates to the activity of the Department to ensure that Developments voluntarily participating in programs funded by the Department offer an integrated housing opportunity for Households with Disabilities.

2. The amended rule does not require a change in work that will require the creation of new employee positions, nor is the amendment significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The amended rule does not require additional future legislative appropriations.

4. The amended rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The amended rule is not creating a new regulation.

6. The amended rule makes changes only to clarify a reference.

7. The amended rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The amended rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111(g).

1. The Department has evaluated this proposed action and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the Department ensuring that Developments voluntarily participating in programs funded by the Department offer an integrated housing opportunity for Households with Disabilities. Other than in the case of a small or micro-business that is voluntarily participating in one of the Department's multifamily programs, no small or micro-businesses are subject to the rule. However, if a small or micro-business is pursuing a multifamily activity with the Department, this rule action merely clarifies a citation.

3. The Department has determined that because the proposed amendment merely clarifies a citation, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The amended rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the amended rule has no economic effect on local employment because the rule relates only to a correction to an incorrect citation.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule merely provides a minor technical change, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. David Cervantes, Acting Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the amended section will be a rule with correct references. There will not be any economic cost to any individuals subject to the

amended rule as the processes described by the rule have already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amended section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 8, 2019, to April 8, 2019, to receive input on the proposed amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time April 8, 2019.

STATUTORY AUTHORITY. The amended section is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed amended section affects no other code, article, or statute.

§1.15. Integrated Housing Rule.

(a) Purpose. It is the purpose of this section to provide a standard by which Developments funded by the Department offer an integrated housing opportunity for Households with Disabilities. This rule is authorized by Tex. Gov't Code, §2306.111(g) that promotes projects that provide integrated affordable housing.

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

(1) Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the funded or awarded Development, or assigned by federal or state law.

(2) Integrated Housing--Living arrangements typical of the general population. Integration is achieved when Households with Disabilities have the option to choose housing units that are located among units that are not reserved or set aside for Households with Disabilities. Integrated Housing is distinctly different from assisted living facilities/arrangements.

(3) Households with Disabilities--A Household composed of one or more persons, at least one of whom is an individual who is determined to have a physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act or disability as defined by other applicable federal or state law.

(c) Applicability. This rule applies to:

(1) All Multifamily Developments subject to Chapter 11 of this title (relating to Qualified Allocation Plan (QAP)), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 of this title (relating to Multifamily Direct Loan Rule),[~~Chapter 10 of this Title, Uniform Multifamily Rules,~~] with the exclusion of Transitional Housing Developments;

(2) Single Family Developments subject to Chapter 23, Subchapter G, of this title, relating to HOME Program Single Family Developments, or done with Neighborhood Stabilization Program funds, with the exclusion of Scattered-site developments, meaning one to four family dwellings located on sites that are on non-adjacent lots, with no more than four units on any one site; and

(3) Only the restrictions or set asides placed on Units through a Contract, LURA, or financing source that limits occupancy to Persons with Disabilities. This rule does not prohibit a Development from having a higher percentage of actual occupants who are Persons with Disabilities.

(4) Previously awarded Multifamily Developments that would no longer be compliant with this rule are not considered to be in violation of the percentages described in subsection (d)(2) or subsection (d)(3) of this title ~~Title~~ if the award is made prior to September 1, 2018, and the restrictions or set asides were already on the Development or proposed in the Application for the Development.

(d) Integrated Housing Standard. Units exclusively set aside or containing a preference for Households with Disabilities must be dispersed throughout a Development.

(1) A Development may not market or restrict occupancy solely to Households with Disabilities unless required by a federal funding source.

(2) Developments with 50 or more Units shall not exclusively set aside more than 25% ~~25 percent~~ of the total Units in the Development for Households with Disabilities.

(3) Developments with fewer than 50 Units shall not exclusively set aside more than 36% ~~36 percent~~ of the Units in the Development for Households with Disabilities.

(e) Board Waiver. The Board may waive the requirements of this rule if the Board can affirm that the waiver of the rule is necessary to serve a population or subpopulation that would not be adequately served without the waiver, and that the Development, even with the waiver, does not substantially deviate from the principle of Integrated Housing.

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 25, 2019.

TRD-201900646
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 475-1762

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SUBCHAPTER D. UNIFORM GUIDANCE FOR RECIPIENTS OF FEDERAL AND STATE FUNDS

10 TAC §1.405

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC Chapter 1, Administration, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.405, Bonding Requirements. The purpose of the revision is to add the Homeless Housing and Services Program (HHSP) and Ending Homelessness Fund (EH Fund) to the list of programs which are subject to the requirements of this section. HHSP and EH Fund are not currently

listed under this section. However, in accordance with the State of Texas Uniform Grant Management Standards, which govern state fund awards to local governments, HHSP which is funded with state general revenue, and EH Fund are required to adhere to the bonding requirements of this section. This rule amendment will add HHSP and EH Fund to the list of applicable programs, as well as make several revisions to statutory citations.

Tex. Gov't Code §2001.0045(b) does not apply to the rule amendment under exception item (9) because it is necessary to implement state legislation, specifically making sure that state funds are appropriately identified as being subject to the Uniform Grant Management Standards. However, even though excepted, there is no cost to this rule action because HHSP subrecipients have already had bonding requirements in place contractually. The correction is only administrative in nature. Because no costs are associated with this proposed rule action, no costs or impacts warrant a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the proposed amendment will be in effect:

1. The amended rule does not create or eliminate a government program, but relates to the activity of the Department to ensure that Developments appropriately follow applicable regulations regarding bonding.

2. The amended rule does not require a change in work that will require the creation of new employee positions, nor is the amendment significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The amended rule does not require additional future legislative appropriations.

4. The amended rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department

5. The amended rule is not creating a new regulation, it is merely administratively adding a program to which this section of rule will be applicable. Those program subrecipients are already subject to this requirement contractually.

6. The amended rule makes as noted in number 5 above.

7. The amended rule will increase the number of entities subject to the rule's applicability by adding the HHSP subrecipients; however, those subrecipients are contractually already obligated to such requirements. Therefore, while new in rule, it is not in fact a new requirement for those entities.

8. The amended rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111(g).

1. The Department has evaluated this proposed action and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the Department ensuring that Developments already participating in Department programs adhere to appropriate bonding requirements and only adds the nine subrecipients that are eligible under the HHSP. As none of those subrecipients would classify as small or micro-businesses, no small or micro-businesses are subject to the rule.

3. The Department has determined that because HHSP subrecipients are not small or micro-businesses, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amended rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed amended rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the amended rule has no economic effect on local employment because the rule relates only to formalizing a requirement that was already in contract.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule is already effectively in practice contractually, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. David Cervantes, Acting Director, has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be assurance that programs subject to bonding requirements are reflected as such in rule. There will not be any economic cost to any individuals subject to the amended rule as the processes described by the rule have already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amended section is in effect, enforcing or administering the amended section does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 8, 2019, to April 8, 2019, to receive input on the proposed amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time April 8, 2019.

STATUTORY AUTHORITY. The amended section is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed amended section affects no other code, article, or statute.

§1.405. Bonding Requirements.

(a) The requirements described in this subsection relate only to construction or facility improvements for DOE WAP, HOME, CDBG, NSP, HHSP, EH Fund, and ESG Subrecipients.

(1) For construction contracts exceeding $100,000, the Subrecipient must request and receive Department approval of the bonding policy and requirements of the Subrecipient to ensure that the Department is adequately protected.

(2) For construction contracts in excess of $100,000, and for which the Department has not made a determination that the Department's interest is adequately protected, a "bid guarantee" from each bidder equivalent to 5% of the bid price shall be requested. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. A bid bond in the form of any of the documents described in this paragraph may be accepted as a "bid guarantee."

(A) A performance bond on the part of the Subrecipient for 100% of the contract price. A "performance bond" is one executed in connection with a contract, to secure fulfillment of all obligations under such contract.

(B) A payment bond on the part of the subcontractor/vendor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(C) Where bonds are required, in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223, "Surety Companies Doing Business with the United States."

(b) A unit of government must comply with the bond requirements contained in [~~of~~] Texas [~~Civil~~] statutes, including Tex. Gov't Code ch. 2253 and Tex. [~~Statutes, Articles 2252, 2253, and 5160, and~~] Local Gov't [~~Government~~] Code[~~,~~] §252.044 and §262.032, as applicable.

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 25, 2019.

TRD-201900647
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 475-1762

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CHAPTER 5. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.802

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.802, Local Operators for the Section 8 Housing Choice Voucher Program. The purpose of the repeal is to eliminate a rule that provided for a process no longer in use by the Department.

The Department has analyzed this rulemaking action and the analysis is described below for each category of analysis performed.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions are applicable. However, the rule action is a repeal removing an unused process from rule. There are no costs associated with this proposed rule action; therefore, no costs or impacts warrant a need to be offset.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. David Cervantes, Acting Director, has determined that, for the first five years the proposed repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal of a process used in the past in the administration of the Section 8 Housing Choice Voucher Program (HCVP). That process is no longer in use by the Department and, therefore, there is no purpose for the rule to exist.

2. The proposed repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation.

6. The action will repeal an existing regulation that is no longer needed.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability, because as of November 2018 no entities were in contracts with the Department that would have been subject to this section.

8. The proposed repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect, there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be the elimination of an obsolete rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 8, 2019, to April 8, 2019, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time April 8, 2019.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

§5.802. Local Operators for the Section 8 Housing Choice Voucher Program.

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

Filed with the Office of the Secretary of State on February 25, 2019.

TRD-201900648
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 475-1762

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. BUSINESS PRACTICES

22 TAC §75.1

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §75.1 (Unsafe and Unsanitary Conditions). The purpose of the new rule is to establish basic sanitary and safety standards for locations where chiropractic is practiced. This rulemaking is also in response to a recommendation made by the Texas Sunset Commission as part of its review of agency policies, procedures, and operations.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule. 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 costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the new rule 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).

Mr. Fortner has determined that for each year of the first five years the new rule will be in effect that the public benefit is to establish basic guidance to licensees for providing safe and sanitary chiropractic services to the public.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §75.1. For each year of the first five years the new rule will be in effect, Mr. Fortner has determined:

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

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

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

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

(5) The new rule does create a new regulation.

(6) The proposed new rule does not expand or limit an existing Board rule for an administrative process.

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

(8) The new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed new rule is published in the *Texas Register.* Please include the rule number and name in the subject line of any comments submitted by email.

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

No other statute, article, or code is affected by this proposal.

§75.1. Unsafe and Unsanitary Conditions.

(a) "Unsanitary" means a condition that could reasonably pose a risk of harm to the health of a patient, employee, contractor of a licensee, or the public.

(b) "Unsafe" means a condition that could reasonably pose a risk of injury to a patient, employee, contractor of a licensee, or the public.

(c) Reasonable and normal wear and tear or aging of chiropractic equipment does not constitute an unsafe or unsanitary condition.

(d) Any location where a licensee practices chiropractic shall be free of unsafe and unsanitary conditions.

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 20, 2019.

TRD-201900590
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 305-6700

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CHAPTER 77. ADVERTISING AND PUBLIC COMMUNICATIONS

22 TAC §77.4

The Texas Board of Chiropractic Examiners (Board) proposes amendments to 22 TAC §77.4 (Misleading Claims). The purpose of the amendments is to make clear that claims, if untrue or exaggerated, regarding the negative consequences of not receiving chiropractic treatment may also be misleading. The amendments further update the rule by eliminating superfluous language.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering 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 costs to persons required to comply with the amendments as proposed. 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).

Mr. Fortner has determined that for each year of the first five years the proposed amendments will be in effect that the public benefit is to make clear to licensees that any claims made to the public regarding either using or not using chiropractic treatment must not be misleading.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed amendments to 22 TAC §77.4. For each year of the first five years the proposed amendments will be in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Board.

(5) The proposed amendments do not create a new regulation.

(6) The proposal amends, but does not expand or limit, an existing Board rule for an administrative process.

(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 the state economy.

Comments on the proposed amendments or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed amended rule is published in the *Texas Register.* Please include the rule number and rule name in the subject line of any comments regarding these amendments submitted by email.

The amended rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes, article, or codes are affected by these proposed amendments.

§77.4. Misleading Claims.

(a) A person advertising chiropractic services shall not use false, deceptive, unfair, or misleading advertising, including~~, but not limited to~~:

(1) claims intended or reasonably likely to embellish or create a false expectation of the favorable results from chiropractic treatment;

(2) claims intended or reasonably likely to create a false expectation of the cost of treatment or the amount of treatment to be provided;

(3) claims reasonably likely to deceive or mislead because the claims in context represent only a partial disclosure of the conditions and ~~relevant~~ facts of the extent of treatment the licensee expects to provide;

(4) claims that state or imply chiropractic services can ~~provide a~~ cure ~~for~~ any condition;

(5) claims that chiropractic services cure or lessen the effects of ailments, injuries, or other disorders of the human body which are outside the scope of chiropractic practice ~~as defined by Chapter 201 of the Occupations Code and Title 22, Part 3 of the Texas Administrative Code~~;

(6) claims that state or imply the results of chiropractic services are guaranteed; ~~or~~

(7) claims that chiropractic services offer results that are not within the realm of scientific proof beyond testimonial statements or manufacturer's claims; or [.]

(8) claims intended or reasonably likely to create a false expectation of the adverse consequences of not receiving chiropractic treatment.

(b) Subsection (a)(2) of this section is not ~~meant to be~~ applicable ~~to circumstances~~ where the cost or amount of treatment varies from an original quotation or advertisement by a reasonable amount.

(c) The standard for ~~to be used in~~ determining whether a violation of this rule has occurred ~~taken place~~ is the generally accepted standards of care within the chiropractic profession in Texas.

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 20, 2019.

TRD-201900591
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 305-6700

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CHAPTER 78. SCOPE OF PRACTICE

22 TAC §78.14

The Texas Board of Chiropractic Examiners (Board) proposes amendments to 22 TAC §78.14 (Acupuncture). The purpose of the amendments is to clarify the requirements for obtaining an acupuncture permit for those licensees who have been practicing acupuncture since before 2010. The amendments clarify that in order to qualify for an acupuncture permit, those licensees must have practiced acupuncture in compliance with previous Board rules and, if they choose this qualification option, they must have satisfied the training and examination requirement before January 1, 2010.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering 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 costs to persons required to comply with the amendments as proposed. 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).

Mr. Fortner has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit is to provide accurate and complete licensee contact information with no economic costs to licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed amendments to 22 TAC §75.1. For each year of the first five years the proposed amendments will be in effect, Mr. Fortner has determined:

(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 Board.

(4) The proposed amendments do not require an increase or decrease in fees paid to the Board.

(5) The proposed amendments do not create a new regulation.

(6) The proposal amends, but does not expand or limit, an existing Board rule for an administrative process.

(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 the state economy.

Comments on the proposed amendments or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed amended rule is published in the *Texas Register.* Please include the rule number and rule name in the subject line of any comments regarding these amendments submitted by email.

The amended rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic.

No other statutes, article, or codes are affected by these proposed amendments.

§78.14. Acupuncture.

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

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

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

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

(e) Requirements for an acupuncture permit:

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

amination, and protocols that meet the blood-borne pathogen standard established by the Occupational Safety and Health Administration.

(2) A person who became a licensee after January 1, 2010, and before the effective date of this rule, who has been practicing acupuncture in compliance with previous Board rules, shall have until September 1, 2019, to obtain an acupuncture permit from the Board by passing the National Board of Chiropractic Examiners' standardized certification examination in acupuncture and completing 100 hours of acupuncture training.

(3) A person who became a licensee before January 1, 2010, and has been practicing acupuncture in compliance with previous Board rules, shall have until September 1, 2019, to obtain an acupuncture permit from the Board by having:

(A) successfully [~~Successfully~~] completed and passed an examination in a one hundred (100) hour training course in acupuncture before January 1, 2010; or

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

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

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

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the 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 20, 2019.

TRD-201900588
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 305-6700

CHAPTER 80. COMPLAINTS

22 TAC §80.4

The Texas Board of Chiropractic Examiners (Board) proposes the repeal of 22 TAC §80.4 concerning Schedule of Sanctions. A new §80.4 is being proposed in a separate rulemaking action. The primary purpose of repealing this rule (and adopting a new rule) is to bring the Board's rules in compliance with changes to Occupations Code Chapter 201 that removed the registration of chiropractic facilities from the Board's jurisdiction. The secondary reason is to update the schedule to reflect new rule citations after the recent renumbering and renaming of the majority of Board rules in November 2018.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. 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 costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal 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).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to bring the Board's rules in compliance with changes to Occupations Code Chapter 201 that removed the registration of chiropractic facilities from the Board's jurisdiction, and to update the schedule to reflect new rule citations after the recent renumbering and renaming of the majority of Board rules.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §80.4. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed repeal does not require a decrease in fees paid to the Board.

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

(6) The proposal repeals existing Board rules for an administrative process.

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

(8) The proposed repeal does not positively or adversely affect the state economy.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any email submitted to the Board.

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

No other statutes or rules are affected by this proposed repeal.

§80.4. Schedule of Sanctions.

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 20, 2019.

TRD-201900592
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 305-6700

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22 TAC §80.4

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.4, concerning Schedule of Penalties, as a replacement for current §80.4, concerning Schedule of Sanctions, which is being repealed in a separate rulemaking action. The primary purpose of proposing this rule is to bring the Board's rules in compliance with changes to Occupations Code Chapter 201, which removed the registration of chiropractic facilities from the Board's jurisdiction. The secondary reason is to update the schedule to reflect new rule citations after the recent renumbering and renaming of the majority of Board rules in November 2018.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for state or local government. 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 costs to persons required to comply with the new rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed new rule 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).

Mr. Fortner has determined that for each year of the first five years the proposed new rule will be in effect the public benefit is to bring the Board's rules in compliance with changes to Occupations Code Chapter 201 that removed the registration of chiropractic facilities from the Board's jurisdiction, and to update the schedule to reflect new rule citations after the recent renumbering and renaming of the majority of Board rules.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §80.4. For each year of the first five years the proposed new rule is in effect, Mr. Fortner has determined:

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

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

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

(4) The proposed new rule does not require a decrease in fees paid to the Board.

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

(6) The proposed new rule amends an existing Board rules for an administrative process.

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

(8) The proposed new rule does not positively or adversely affect the state economy.

Comments on the proposed new rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed new rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

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

No other statutes or rules are affected by this proposed new rule.

§80.4. Schedule of Penalties.

(a) The following table contains the maximum administrative penalty the Board may impose for each category of violation of statutes and rules under the Board's jurisdiction:
Figure: 22 TAC §80.4(a)

(b) For a violation of statute or rule not listed in the table for which the Board may take disciplinary action, the maximum penalty is up to $1000 and 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 20, 2019.

TRD-201900593
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 305-6700

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PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 275. CONTINUING EDUCATION

22 TAC §275.1

The Texas Optometry Board proposes amendments to Rule §275.1, concerning General Requirements, to increase the number of diagnosis or treatment of ocular disease continuing education hours required. Texas Occupations Code §351.308 requires licensees to obtain a minimum of six continuing education hours in the diagnosis or treatment of ocular disease in order to renew the optometry license. The rule amendments change the requirement to 12 hours relating to the diagnosis or treatment of ocular disease beginning with the 2021 license renewal. The total number of continuing education hours required is not changed. The amendments also remove outdated language.

Chris Kloeris, executive director of the Texas Optometry Board, estimates that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments. Mr. Kloeris has also determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that licensees diagnosing and treating ocular disease will be required to take increased annual education directly related to that practice.

The amendments are necessary to protect the health, safety, and welfare of the residents of this state and apply to licensed optometrists, the individuals affected by this rule. It is predicted that economic costs for licensees subject to the amendments will be negligible at most because the total number of continuing education hours will remain the same. Over 4,000 agency approved live course hours in the diagnosis or treatment of ocular disease are available each year. In addition, 285 Internet course hours were approved in 2018 by the agency. The cost of continuing education classes in the diagnosis or treatment of ocular disease is substantially similar to the cost of continuing education classes concerning other areas of optometry practice. Eighty-five percent of licensees renewing licenses for 2019 would have met the new requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

The agency licenses approximately 4,600 optometrists affected by the rule amendments. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. Some of these practices are in rural communities. The agency does not license these practices; it only licenses individual optometrists. The projected economic impact of this new rule on the small businesses and rural communities is projected to be neutral based on the analysis in the preceding paragraph.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule 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.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as continuing education requirement is currently imposed by statute. Further, implementation of the proposed amendments will not require the creation of new employee position or the elimination of an existing employee position; implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency; and the proposed amendments will not require an increase or decrease in fees paid to the agency. The proposed amendments do not create a new regulation but do expand the current rule to increase hours in a certain continuing education category. The proposed amendments do not change the number of individuals subject to the rule, and the effect on the state's economy is neutral.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register.*

The amendment and new rule are proposed under the Texas Optometry Act, Texas Occupations Code, §351.151 and §351.308. The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.308 to require licensees to take at least six continuing education hours each year in the diagnosis or treatment of ocular disease.

No other sections are affected by the amendments.

§275.1. General Requirements.

(a) The Act requires each optometrist licensed in this state to take 16 hours of continuing education per calendar year with at least six hours in the diagnosis or treatment of ocular disease. Beginning with the 2021 license renewal, at least 12 hours of the required 16 hours shall be in the diagnosis or treatment of ocular disease. The [~~Beginning with the 2010 license renewal, the~~] subject of at least one hour of the required 16 hours shall be professional responsibility. The calendar year is considered to begin January 1 and run through December 31.

(b) - (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 15, 2019.

TRD-201900562
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 305-5800

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PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.22

PURPOSE OF THE PROPOSED RULE

The Texas State Board of Plumbing Examiners ("Board") proposes amendments to §363.22, concerning reexamination of applicants. The Board finds that the initial reason for adopting §363.22 is still relevant since examining applicants is an integral part of the Board's mission to ensure that plumbing work meets professional standards that ensure the health, safety, and welfare of the public.

In furtherance of this objective, the Board has proposed amendments specifically to §363.22(a) - (b) to address the increased demand of applicants seeking licensure through the Board by requiring a training period for individuals that failed an examination before they may reapply for examination.

The proposed training period will result in a greater number of the most prepared applicants being examined due to the preclusion of unsuccessful candidates from reapplying too soon for reexamination. The additional training period required before reapplication will reduce barriers to entry into the plumbing profession for those applicants who have not previously failed an examination because they will be examined before those applicants who previously did not pass the examination. This will result in an awareness of the importance of examination preparation for candidates and address the increased demand of applicants seeking licensure in Texas that are delayed from being examined due to the many unprepared candidates repeatedly filling examination seats. The Board recognizes that the installation of actual plumbing work is imperative to protecting the health, safety, and welfare of the public, hence the requirement for an applicant to pass both a practical and written examination after having a reasonable opportunity to do so.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lisa G. Hill, Executive Director of the Board, approves the Board's analysis that each year of the first five years that the proposed amendments will be in effect that the following will occur:

(1) There will be no additional estimated cost to the state and to local government.

(2) There will be an estimated reduction in costs due to not repeatedly furnishing to unprepared applicants at the appointed exam date all of the necessary testing materials for all parts of the examination.

(3) It is estimated that there will be a loss in revenue to the state or local government, specifically to state government due to a reduction in examination fees collected from applicants who otherwise would retake the examination numerous times.

PUBLIC BENEFITS/COST NOTES

Texas has experienced a continual economic growth and hence population growth. A growth in population fosters an environment of various new commercial and residential construction. This has prompted the Board to evaluate the proposed rule amendment. Ms. Hill has determined that for each of the five years the proposed amendments are in effect, the public would benefit from the proposed rule amendment due to preventing the delay of qualified individuals from entering the plumbing trade. More qualified plumbers will benefit the public since these individuals are responsible for the safety, health and welfare of the Public.

There are no anticipated costs of compliance associated with the proposal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code 2006.002, is required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the amendments to this rule as proposed. There is no effect on local economy for the first five years that the proposed rule is in effect; therefore, no local employment impact statement is required under Texas Government Code §§2001.022 and 2001.0124(a)(6).

COSTS TO REGULATED PERSONS

Ms. Hill has evaluated the potential costs that may be incurred by individuals seeking to enter the plumbing trade and has determined there will not be any probable costs that would negatively impact those that are regulated under the authority of the Board.

There is no effect on local economy for the first five years that the proposed new rule is in effect; therefore, no local employment impact statement is required under Texas Government Code §§2001.022 and 2001.024(a)(6).

GOVERNMENT GROWTH IMPACT STATEMENT

The first five years that the rule amendment of §363.22(b) is in effect the following will occur:

(1) A government program will not be created or eliminated.

(2) Employee positions will not be created or eliminated.

(3) Future legislative appropriations for this agency will not increase or decrease.

(4) Fees that are paid to this agency will not increase or decrease.

(5) No new regulation will be imposed as a result.

(6) It will not expand, limit, or repeal an existing regulation.

(7) The number of individuals subject to the rule amendment will increase thus addressing the increased demand of applicants seeking to enter the plumbing trade.

(8) A positive effect on the state's economy due to qualified individuals engaging in plumbing.

TAKINGS IMPACT ASSESSMENT

Ms. Hill has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of governmental action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

ENVIRONMENTAL ANALYSIS

The proposed amendments will not have any effect on the environment.

PUBLIC COMMENTS

The Board welcomes written public comments concerning the proposed amendments. All written public comments must be received within 30 days after publication in the Texas Register. Please send all written public comments to Texas State Board of Plumbing Examiners, Attention: Lisa G. Hill, Executive Director P.O. Box 4200, Austin, TX 78765-4200 or via email to info@tsbpe.texas.gov. Please when emailing your public comments list in the subject line "363.22 Reexamination." You may also contact us by telephone at: (512) 936-5239.

STATEMENT OF AUTHORITY

The proposed rule amendments are done so in accordance with §1301.251(2) of the Texas Occupations Code, which enables the Board to adopt and enforce rules necessary to its ability to administer the plumbing laws. Furthermore, the proposed rule amendments are done so in accordance with §1301.352 of the Texas Occupations Code, which enables the Board to require individuals to demonstrate the fitness, competence, and qualifications to be licensed by passing a uniform, reasonable examination. No other statute, article, or code is affected by the proposed rule amendments.

§363.22. Reexamination.

(a) An applicant who [~~that~~] fails any single part of a multiple part examination may retake the part or parts that were failed without having to retake the entire examination.

(1) A failing score on a single part of an examination is a score of 69.9 points or less.

(2) A time limit of three (3) hours is allotted for reexamination of the part that was failed.

(3) The applicant must submit a new exam application and fee in order to retake the part that was failed.

(b) An applicant who fails any part or parts of an examination shall complete a study/training [~~training~~] period before that individual [~~the applicant~~] may apply for reexamination [~~retake the examination~~]. It is recommended that the study/training period for applicants include a review regarding the practical application of professional plumbing practices and the applicable codes, rules, and regulations concerning such. The length of the required training period is determined by the number of times the applicant has failed as follows:

(1) first failure: 30-day training period;

(2) second failure: 60-day training period; and

(3) third and subsequent failures: 90-day training period.

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 21, 2019.

TRD-201900617
Jerry D. Lee III
Staff Attorney
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 936-5239

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.7

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §461.7, License Statuses.

Overview and Explanation of the Proposed Rule Amendment. The proposed amendment is necessary to ensure conformity in the Board's rules, namely to comport with the proposed new rule §463.22, Reinstatement of a License.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined that for the first five-year period the proposed rule amendment is in effect, there will be a benefit to applicants and licensees because the proposed rule amendment will provide greater clarity and consistency in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments. Therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends and clarifies an existing regulation; it does not expand an existing regulation but it does repeal a part of a regulation to comport with a proposed new rule which will create less regulatory burdens on applicants reapplying for licensure; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule amendment is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it. Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§461.7. License Statuses.

(a) Active Status. Any licensee with a license on active status may practice psychology pursuant to that license. Any license that is not on inactive, delinquent, retired, resigned, expired or revoked status is considered to be on active status. Active status is the only status under which a licensee may engage in the practice of psychology.

(b) Inactive Status.

(1) A licensee may elect inactive status by applying to the Board and paying the fee set in Board rule §473.5(b) of this title (relating to Miscellaneous Fees (Not Refundable)).

(2) Licensees who seek inactive status must return their license to the Board. A licensee may not practice psychology under an inactive license.

(3) A licensee may place his/her active license on inactive status for a period of two years. Reactivation of this license may occur at any time during this two-year period without the person having to take an exam provided that the person has notified the Board and has paid the required fees. At the end of the two-year period, if the license has not been reactivated, the license will expire. The inactive status may be extended for additional increments of two years if, prior to the end of each two-year period, the person notifies the Board in writing that an extension is requested and submits proof to the Board of continuous licensure by a psychology licensing board in this or another jurisdiction for the past two-year period and payment of all required fees. Licensees may indefinitely remain on inactive status if he/she is licensed in this or another jurisdiction and complies with the extension requirements set forth in this paragraph. Any licensee wishing to reactivate his/her license that has been on inactive status for four years or more must take and pass the Jurisprudence Exam with the minimum acceptable score as set forth in Board rule §463.14 of this title (relating to Written Examinations) unless the licensee holds another license on active status with this Board.

(4) Any licensee who returns to active status after having been on inactive status must provide proof of compliance with Board rule §461.11 of this title (relating to Professional Development) before reactivation will occur.

(5) A licensee with a pending complaint may not place a license on inactive status. If disciplinary action is taken against a licensee's inactive license, the licensee must reactivate the license until the action has been terminated.

(6) Inactive status may be extended for two additional years upon the Board's review and approval of medical documentation of a catastrophic medical condition of the licensee. The request for this extension must be received in writing before the end of the current inactive status period and requires payment of the $100 inactive status fee.

(c) Delinquent Status. A licensee who fails to renew his/her license for any reason when required is considered to be on delinquent status. Any license delinquent for more than 12 consecutive months shall expire. A licensee may not engage in the practice of psychology

under a delinquent license. The Board may sanction a delinquent licensee for violations of Board rules.

(d) Restricted Status. Any license that is currently suspended, on probated suspension, or is currently required to fulfill some requirements in a Board order is considered to be on restricted status. A licensee practicing under a restricted license must comply with any restrictions placed thereon by the Board.

(e) Retirement Status. A licensee who is on active or inactive status with the Board may retire his/her license by notifying the Board in writing prior to the renewal date for the license. A licensee with a delinquent status may also retire his/her license by notifying the Board in writing prior to the license expiring. However, a licensee with a pending complaint or restricted license may not retire his/her license. A licensee who retires his/her license shall be reported to have retired in good standing.

(f) Resignation Status. A licensee may resign only upon express agreement by the Board. A licensee who resigns shall be reported as:

(1) Resigned in lieu of adjudication if permitted to resign while a complaint is pending; or

(2) Resigned in lieu of further disciplinary action if permitted to resign while the license is subject to restriction.

(g) Expired Status. A license that has been delinquent for 12 months or more or any inactive license that is not renewed or reactivated is considered to be expired. An individual may not engage in the practice of psychology under an expired license. [~~A license that has expired may not be reinstated for any reason. A licensee whose license has expired must submit a new application if he or she wishes to obtain a new license with the Board.~~]

(h) Revoked Status. A license is revoked pursuant to Board Order requiring revocation as a disciplinary action.

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

Filed with the Office of the Secretary of State on February 25, 2019.

TRD-201900658
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.22

The Texas State Board of Examiners of Psychologists proposes new rule §463.22, Reinstatement of a License.

Overview and Explanation of the Proposed Rule Amendment. The proposed new rule will reduce regulatory burden by creating an expedited application process for individuals previously licensed by the agency and provide greater public protection by ensuring continuity of license numbers for individuals with a disciplinary history. The proposed new rule will also strengthen the agency's ability to vet prior licensees with disciplinary history who again seek licensure in Texas.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed new rule is in effect, there will be no additional estimated cost, no reduction in costs, and virtually no loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Under the following example it is possible for the Board to see a reduction in the amount of licensing fees received by the agency. Under the current regulatory scheme if a licensed psychologist loses his or her license, e.g. the licensee fails to renew the license and the license expires, he or she may reapply but must first submit an application and fees for a license as a provisionally licensed psychologist, and once obtained he or she may then submit an application and fee for license as a licensed psychologist. Under the proposed new rule such an applicant would only need to submit an application and fee for a license as a psychologist, therefore it is possible for the Board to receive a reduction in licensing fees from such applicants since the agency would no longer be receiving the fee for the provisionally licensed psychologist application. This possible reduction or loss in revenue to state government from this proposed new rule is estimated to be negligible and any such possible reduction in state revenue would correspond to a reduction in costs and regulatory burdens to applicants. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed new rule is in effect, there will be a benefit to licensees and applicants because the proposed rule amendment will provide greater clarity in the Board's rules and will shorten the application process for some applicants. For example, applicants that were previously licensed by the Board will now file a different application, an application for reinstatement, instead of going through the full application process again which Mr. Spinks estimates will reduce the amount of processing time for Board staff as well as reduce the amount of required documentation to be submitted by the applicant. Mr. Spinks has also determined that for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. For example, if a licensee loses his or her license, e.g. the licensee fails to renew the license and the license expires, he or she would have to submit a new application for licensure and if granted a new license number would be issued, making the tracking of past disciplinary history for that licensee more difficult for the public as well as the Board's staff.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed new rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed new rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed new rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the

Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed new rule will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed new rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed new rule is in effect, the Board estimates that the proposed new rule will have no effect on government growth. The proposed new rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does create a new regulation, but this new regulation creates less regulatory burden on applicants reapplying for licensure; it does not expand an existing regulation but it does repeal a regulation that currently does not allow for individuals with expired licenses to be reinstated, such applicants are required to go through the full application process again; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed new rule. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed new rule may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The new rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this new rule pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

Board rules §461.7 and §473.1 will be affected by this new rule. No other code, articles or statutes are affected by this section.

§463.22. Reinstatement of a License.

(a) A person whose license to practice psychology has expired or been retired, revoked, or resigned, may apply for reinstatement of the license. A person seeking re-licensure must apply for reinstatement, rather than applying for a new license.

(b) An application for reinstatement shall be in writing and in the form prescribed by the Board.

(c) In the case of revocation or resignation, application for reinstatement shall not be made prior to one year after the effective date of the revocation or resignation or prior to any time period specified in the order of revocation or resignation.

(d) The Board may approve or deny an application for reinstatement, and in the case of a denial, the Board may also set a reasonable time period that must elapse before another application may be filed. The Board may also impose reasonable terms and conditions that an applicant must satisfy before reinstatement of an unrestricted license.

(e) A person seeking reinstatement of a license shall appear before the Board in person to answer any questions or address any concerns raised by his or her application if requested by a board member or the executive director. Failure to comply with this paragraph shall constitute grounds for denial of the application for reinstatement.

(f) An application for reinstatement of an expired, retired, revoked, or resigned license may be granted upon proof of each of the following:

(1) payment of the application fee;

(2) submission of a self-query report from the National Practitioner Data Bank (NPDB). The report must be submitted with the application in the sealed envelope in which it was received from the NPDB;

(3) passage of the jurisprudence examination;

(4) a fingerprint based criminal history check which reflects no disqualifying criminal history; and

(5) submission of any other documentation or information requested in the application or which the Board may deem necessary in order to ensure the public's safety when processing the application.

(g) An applicant seeking reinstatement of a license that has been retired or expired for five years or more or a license that has been revoked or resigned, must also demonstrate completion of at least forty hours of professional development within the twenty-four month period preceding the date of application. The professional development must meet the requirements of Board rule §461.11 of this title (relating to Professional Development).

(h) The Board will evaluate each of the following criteria when considering reinstatement of an expired, revoked, or resigned license:

(1) the circumstances surrounding the expiration, revocation, or resignation of the license;

(2) the conduct of the applicant subsequent to the expiration, revocation, or resignation of the license;

(3) the lapse of time since the expiration, revocation, or resignation of the license;

(4) compliance with all terms and conditions imposed by the Board in any previous board order; and

(5) the applicant's present qualification to practice psychology based on his or her history of psychology-related employment, service, education, or training, as well as his or her professional development in psychology since the expiration, revocation, or resignation of the license.

(i) Notwithstanding time limits on original applications and examinations found elsewhere in Board rules, an applicant seeking reinstatement of a license must submit all required documentation and information, and successfully pass the jurisprudence examination within the 180 day time period specified by the Board. Failure to do so shall result in the application for reinstatement expiring. The Board will send each applicant a letter specifying the 180 day time period upon receipt of a completed application for reinstatement and application fee.

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 25, 2019.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.6

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §465.6, Public Statements, Advertisements, and Specialty Titles.

Overview and Explanation of the Proposed Rule Amendment. The proposed amendment is necessary to reduce the regulatory burden on licensees of correcting or attempting to correct inaccurate statements made about the licensee by third-parties. The regulatory burden of this rule simply outweighs the public protection afforded by the language proposed for repeal. The proposed amendment will also ensure the agency's rules are not utilized by any individual(s) to restrict or chill what could otherwise be protected speech under the First Amendment to the U.S. Constitution.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect there will be a benefit to licensees because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public without infringing upon otherwise protected speech.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments. Therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the Texas Register. Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule amendment is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

The Board also proposes this rule amendment in accordance with §501.156 of the Tex. Occ. Code which allows the Board, under certain conditions, to adopt rules prohibiting false, misleading, or deceptive practices by a person.

No other code, articles or statutes are affected by this section.

§465.6 Public Statements, Advertisements, and Specialty Titles.

(a) Public Statements and Advertisements. ~~(1)~~ Licensees shall not authorize, use or make any public statements or advertisements that are false, deceptive, misleading or fraudulent, either because of what they state, convey or suggest or because of what they omit concerning their own training, experience, abilities or competence; their academic degrees; their credentials; their institutional or association affiliations; or their publications or research.

~~[(2) Licensees who learn of any false or deceptive statements about any of the matters referenced in subsection (a)(1) must make reasonable efforts to correct such statements.]~~

(b) Solicitation of Testimonials and/or Patients.

(1) Licensees do not solicit testimonials from current clients or patients or from other persons who are vulnerable to undue influence.

(2) Licensees do not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential patients or clients.

(c) Use of Titles.

(1) An individual may not use the title of "Licensed Psychologist" unless the individual is licensed as such by this agency.

(2) An individual may not use the title of "Psychologist" when engaged in the practice of psychology, unless the individual is licensed as such by this agency.

(3) A licensed psychologist may not use a specialty title unless one or more of the following criteria have been met:

(A) the individual holds a doctorate in the area of specialization;

(B) the individual has undergone retraining under the American Psychological Association retraining guidelines of 1977 in the area of specialization;

(C) the individual has completed a two-year postdoctoral fellowship in the area of specialization;

(D) for individuals who matriculated from a doctoral program in psychology prior to 1978, documentation of academic coursework and relevant applied experience, as well as proof that the title has been used for at least five years; or

(E) documentation of certification, approval, or specialist status granted by a professional, refereed board, provided that the licensee indicates the name of the board which granted the title and that the individual's status with the specialty board is current and in good standing. Use of the term "Board Certified" or "Board Approved" or any similar words or phrases calculated to convey the same meaning shall constitute misleading or deceptive advertising, unless the licensee discloses the complete name of the specialty board that conferred the aforementioned specialty title, certification, approval or specialist status.

(d) Assumed Names and Legal Entities. Licensees engaged in the practice of psychology under an assumed name or through a legal entity must comply with the name and notification requirements set out in the Assumed Business and Professional Name Act found in Chapter 71 of the Texas Business and Commerce Code and §5.060 of the Texas Business Organizations Code.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §465.22

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §465.22, Psychological Records, Test Data and Test Materials.

Overview and Explanation of the Proposed Rule Amendment. The proposed amendment is necessary to clarify the requirement that licensees provide copies of test materials in response to a lawful subpoena. The proposed amendment also serves to remove confusing language regarding permission from the test publishers.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees and the general public because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments. Therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule amendment is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

No other code, articles or statutes are affected by this section.

§465.22. Psychological Records, Test Data and Test Materials.

(a) General Requirements.

(1) All licensees shall create and maintain accurate, current, and pertinent records of all psychological services rendered by or under the supervision of the licensee.

(2) All records shall be sufficient to permit planning for continuity in the event that another care provider takes over delivery of services to a patient or client for any reason, including the death, disability or retirement of the licensee and to permit adequate regulatory and administrative review of the psychological service.

(3) All licensees shall identify impressions and tentative conclusions as such in patient or client records.

(4) All records and record entries shall be created in as timely a manner as possible after the delivery of the specific services being recorded.

(5) Records shall be maintained and stored in a way that permits review and duplication.

(6) Licensees working in public school settings shall comply with all federal and state laws relative to the content, maintenance,

control, access, retention and destruction of psychological and educational records, test data and test protocols.

(7) Licensees are prohibited from falsifying, altering, fabricating, or back-dating records and reports.

(b) Maintenance and Control of Records.

(1) Licensees shall maintain records in a manner that protects the confidentiality of all services delivered by the licensee.

(2) Licensees are responsible for the contents of, as well as the access, retention, control, maintenance, and destruction of all records unless stated otherwise by law.

(3) Licensees shall make all reasonable efforts to protect against the misuse of any record.

(4) Licensees shall maintain control over records to the extent necessary to ensure compliance with all applicable state and federal laws.

(5) In situations where it becomes impossible for a licensee to maintain control over records as required by state or federal law, the licensee shall make all necessary arrangements for transfer of the licensee's records to another licensee who will ensure compliance with state and federal laws concerning records.

(6) The possession, access, retention, control, maintenance, and destruction of records of psychological services rendered by a licensee as an employee of or contractor for an agency or organization remain the responsibility of that agency or organization upon termination of the licensee's employment or contract unless otherwise required by state or federal law or legal agreement.

(c) Access to Records.

(1) Records shall be entered, organized and maintained in a manner that facilitates their use by all authorized persons.

(2) Records may be maintained in any media that ensure confidentiality and durability.

(3) A licensee shall release information about a patient or client only upon written authorization from the patient or client, or as otherwise permitted or required under state or federal law.

(4) Test materials are not part of a patient's or client's record and may not be copied or distributed [~~without the permission of the test publisher~~] unless otherwise permitted or required under state or [~~and~~] federal law. [~~A licensee who is served with a subpoena requiring production of test materials should take reasonable steps to notify and provide the test publisher with a copy of the subpoena as promptly as possible, but may not produce test materials in response to a subpoena without the test publisher's permission or a court order.~~]

(5) Test data are part of a patient's records and must be released to the patient as part of the patient's records. In the event test data are commingled with test materials, licensees may inquire whether the patient will accept a summary or narrative of the test data in lieu of having to either redact the test materials or extract the test data from test materials in order to comply with the request for records.

(6) Licensees cooperate in the continuity of care of patients and clients by providing appropriate information to succeeding qualified service providers as permitted by applicable Board rule and state and federal law.

(7) Licensees who are temporarily or permanently unable to practice psychology shall implement a system that enables their records to be accessed in compliance with applicable Board rules and state and federal law.

(8) Access to records may not be withheld due to an outstanding balance owed by a client for psychological services provided prior to the patient's request for records. However, licensees may impose a reasonable fee for review and/or reproduction of records and are not required to permit examination until such fee is paid, unless there is a medical emergency or the records are to be used in support of an application for disability benefits.

(9) No later than 15 days after receiving a written request from a patient to examine or copy all or part of the patient's mental health records, a psychologist shall:

(A) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or

(B) inform the patient in writing that the information does not exist or cannot be found; or

(C) when withholding information, provide the patient with a signed and dated statement reflecting the licensee's determination, based upon the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the patient or another person. The written statement must specify the portion of the record being withheld, the reason for denial and the duration of the denial.

(10) A licensee may, but is not required to provide a patient with access to psychotherapy notes, as that term is specifically defined in 45 C.F.R. §164.501, maintained by the licensee concerning the patient.

(d) Retention of Records.

(1) Licensees shall comply with all applicable laws, rules and regulations concerning record retention.

(2) In the absence of applicable state and federal laws, rules and regulations, records and test data shall be maintained for a minimum of seven years after termination of services with the patient, client or subject of evaluation, or three years after a patient or subject of evaluation reaches the age of majority, whichever is greater.

(3) All records shall be maintained in a manner which permits timely retrieval and production.

(e) Outdated Records.

(1) Licensees take reasonable steps when disclosing records to note information that is outdated.

(2) Disposal of records shall be done in an appropriate manner that ensures confidentiality of the records in compliance with applicable Board rules and state and federal laws.

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

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Darrel D. Spinks
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CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.17

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §470.17, Motion for Rehearing.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE AMENDMENT. The proposed amendment is necessary to ensure conformity with legislative changes made to Chapter 2001 of the Tex. Gov't Code, namely §§2001.141 - 2001.147.

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

PROBABLE ECONOMIC COSTS. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

LOCAL EMPLOYMENT IMPACT STATEMENT. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

REQUIREMENT FOR RULES INCREASING COSTS TO REGULATED PERSONS. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

STATUTORY AUTHORITY. The rule amendment is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code, which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

The Board also proposes this rule amendment in accordance with §501.152 of the Tex. Occ. Code, which allows the Board to adopt rules to set fees in amounts reasonable and necessary to cover the costs of administering the Psychologists' Licensing Act.

No other code, articles or statutes are affected by this section.

§470.17. Motion for Rehearing.

(a) A motion for rehearing is a prerequisite to appeal from a Board's final decision or order in a contested case. A motion for re-

hearing shall be filed and handled in accordance with Tex. Gov't. Code Chapter 2001, Subchapter F [~~by a party not later than the 20th day after the date on which the party or his attorney of record is notified of the final decision or order of the Board~~].

(b) The Executive Director is authorized to grant or deny, at his or her own discretion, requests to extend the deadline for filing a motion for rehearing in accordance with Tex. Gov't. Code Chapter 2001, Subchapter F[~~Replies to a motion for rehearing shall be filed with the executive director/secretary not later than the 30th day after the date on which the party or his attorney of record is notified of the final decision or order in accordance with §2001.142 of the APA~~].

(c) In the event of an extension, the motion for rehearing may be overruled by operation of law in accordance with Tex. Gov't. Code Chapter 2001, Subchapter F [~~Board action on the motion for rehearing shall be taken not later than the 45th day after the date on which the party or his attorney of record is notified of the final decision or order as required by §2001.142 or the motion is overruled by operation of law~~].

~~[(d) If Board action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date the party or his attorney of record is notified of the final decision or order in accordance with §2001.142. The Board, by written order, may extend the period of time for filing the motions and replies and taking Board action, except that an extension may not extend the period for Board action beyond 90 days after the date the party or his attorney of record is notified of the final decision.]~~

~~[(e) In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the party or his attorney of record is notified of the final decision or order in accordance with §2001.142 of the APA.]~~

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 25, 2019.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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CHAPTER 473. FEES

22 TAC §473.1

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §473.1, Application Fees ((Not Refundable).

Overview and Explanation of the Proposed Rule Amendment. The proposed amendment is necessary to ensure the appropriate fee is collected for processing applications seeking reinstatement of a prior license.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined that for the first five-year period the proposed rule amendment is in effect, there will be a benefit to applicants and licensees because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined that for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments. Therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to pre-

pare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule amendment is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

The Board also proposes this rule amendment in accordance with §501.152 of the Tex. Occ. Code which allows the Board to adopt rules to set fees in amounts reasonable and necessary to cover the costs of administering the Psychologists' Licensing Act.

No other code, articles or statutes are affected by this section.

§473.1. Application Fees (Not Refundable).

(a) [~~Generally Applicable~~] Application Fees for Original or Initial Applications for Licensure:

(1) Licensed Psychological Associate--$190 [~~Psychological Associate Licensure--$190~~]

(2) Provisionally Licensed Psychologist--$340

(3) Licensed Psychologist--$180 [~~Licensure--$180~~]

(4) Reciprocity--$480

(5) Licensed Specialist in School Psychology--$220

(b) Application Fee for Reinstatement of a License--$200

(c) [~~(b)~~] All license application fees payable to the Board are waived for the following individuals:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all of the requirements for licensure; and

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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22 TAC §473.2

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §473.2, Examination Fees (Non-Refundable).

Overview and Explanation of the Proposed Rule Amendment. The proposed amendment eliminates outdated language regarding the exam fee for the jurisprudence examination.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect there will be a benefit to licensees because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on

local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments. Therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

Statutory Authority. The rule amendment is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

The Board also proposes this rule amendment in accordance with §501.152 of the Tex. Occ. Code which allows the Board to adopt rules to set fees in amounts reasonable and necessary to cover the costs of administering the Psychologists' Licensing Act.

No other code, articles or statutes are affected by this section.

§473.2. Examination Fees (Non-Refundable).

(a) Generally Applicable Examination Fees:

(1) Examination for the Professional Practice of Psychology--$600

(2) Jurisprudence Examination--$234. A portion of this fee, $34, goes to the third-party vendor that administers the examination on behalf of the Board.[~~$200. This fee shall increase to $234 following implementation of the online version of the Jurisprudence Examination, with $200 being attributable to the Board and $34 being attributable to the third-party vendor administering the examination.~~]

(b) The portion of the Jurisprudence Examination fee attributable to the Board, shall be waived for the following individuals:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all of the requirements for licensure; and

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

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

Filed with the Office of the Secretary of State on February 25, 2019.

TRD-201900667
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 305-7700

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22 TAC §473.4

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §473.4, Late Fees for Renewals (Not Refundable).

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE AMENDMENT. The proposed amendment is necessary to ensure the agency's late renewal fees comport with the requirements of §501.302 of the Tex. Occ. Code.

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue

to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect there will be a benefit to licensees because the proposed rule amendment will provide greater clarity in the Board's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

PROBABLE ECONOMIC COSTS. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES. Mr. Spinks has determined that the proposed rule amendment will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Board is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

LOCAL EMPLOYMENT IMPACT STATEMENT. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

REQUIREMENT FOR RULES INCREASING COSTS TO REGULATED PERSONS. The proposed amendment does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule amendment is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule amendment will have no effect on government growth. The proposed rule amendment does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation, it amends an existing regulation; it does not expand or repeal an existing regulation, it clarifies an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule amendment. Thus, the Board is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule amendment may be submitted to Brenda Skiff, Public Information Officer, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste. 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to Open.Records@tsbep.texas.gov.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See §2006.002(c) and (c-1) of the Tex. Gov't Code.

STATUTORY AUTHORITY. The rule amendment is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Board proposes this rule amendment pursuant to the authority found in §501.151(a) of the Tex. Occ. Code which vests the Board with the authority to adopt rules necessary to perform its duties and regulate its proceedings.

The Board also proposes this rule amendment in accordance with §501.152 of the Tex. Occ. Code which allows the Board to adopt rules to set fees in amounts reasonable and necessary to cover the costs of administering the Psychologists' Licensing Act, as well as §501.302(b) of the Tex. Occ. Code which lists specific requirements for late renewal fees.

No other code, articles or statutes are affected by this section.

§473.4. Late Fees for Renewals (Not Refundable).

(a) Licensed Psychological Associates, Provisionally Licensed Psychologists, Licensed Psychologists

(1) One day to ninety days--$300

(2) Ninety-one days to less than one year--$600

(b) Licensed Specialists in School Psychology

(1) One day to ninety days--$100 [~~$105~~]

(2) Ninety-one days to less than one year--$200 [~~$210~~]

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 25, 2019.

TRD-201900668

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 305-7700

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance proposes to amend 28 TAC Subchapter E, Fire Extinguisher Rules §§34.510, 34.511, 34.514, and 34.515; Subchapter F, Fire Alarm Rules, §§34.610, 34.613, 34.614, 34.616, and 34.622; Subchapter G, Fire Sprinkler Rules, §§34.710, 34.713, and 34.714; and Subchapter H, Storage and Sale of Fireworks, §§34.808, 34.811, 34.814, and 34.817. These amendments are necessary to clarify the intent of the regulations, efficiently administer the respective statutes, and provide for the safety of regulated persons and their customers.

EXPLANATION. The proposal includes amendments relating to the state fire marshal. Additional nonsubstantive edits have been made to the rule text to conform to agency style and for consistency across the rules.

SUBCHAPTER E. FIRE EXTINGUISHER RULES. The purpose of Insurance Code Chapter 6001 is to safeguard lives and property by regulating the leasing, selling, installing, and servicing of portable fire extinguishers and the planning, certifying, installing, and servicing of fixed fire extinguisher systems. The following proposed amendments to Subchapter E are necessary to implement the statute and to safeguard lives and property.

Section 34.510. Certificates of Registration.

The department proposes to add a clarification to §34.510(d) to require that the business location indicated on the certificate of registration is an actual physical address. In the course of fulfilling their duties, State Fire Marshal's Office investigators may need to go to the actual location of a registered firm. A mailing address or P.O. box on a certificate of registration does not support this. Including a physical location on a certificate of registration ensures that the State Fire Marshal's Office staff can locate and inspect the business site and efficiently provide for the safety and wellness of all persons by ensuring the registered firm is complying with applicable statutes and rules. This change is not expected to impact regulated persons. Regulated persons must already provide the specific business location. The proposed amendment is intended to eliminate any ambiguity in the rule. Regulated persons would provide a physical address on renewal or if requested by agency staff, but they are not otherwise expected to file documents with the State Fire Marshal's Office as a result of the proposed amendment.

Section 34.511. Fire Extinguisher Licenses.

The department proposes to remove license Type R. Only three licenses of this type were ever issued, and the last Type R license issued in Texas expired on April 7, 2017, and was not renewed. The State Fire Marshal's Office has not received any applications for a Type R license since that time. The type R license was created by rule in 2006 and intended to address a perceived need for regulation related to a specific type of range-top fire suppression device. Over time, the product evolved to a mail-order and direct sales item installed by the end user, as opposed to a device sold and installed by a third party. The need for licensing related to sales and installation of the devices no longer exists. There will be no impact to anyone by eliminating the Type R license as there are no current licensees, and elimination of the obsolete and outdated Type R license will provide for more efficient administration of Insurance Code Chapter 6001.

Section 34.514. Applications.

The department proposes to amend the requirement that corporations applying for certificates of registration provide proof that their franchise tax is in "active status" rather than the outdated "Certificate of Good Standing." This amendment reflects a change in the state comptroller's office procedures and terminology and is not expected to substantively impact regulated persons.

The department proposes to add a requirement that new applications for apprentice permits must be accompanied by a criminal history report from the Texas Department of Public Safety. This requirement is expected to add costs to affected applicants, but it is necessary to protect the public.

Section 34.515. Fees.

The department proposes to amend the fee procedure requirements in §34.515(a) to allow for alternative online payment of fees as those options become available. This change will allow for more efficient administration of the statute and rules.

SUBCHAPTER F. FIRE ALARM RULES

Insurance Code Chapter 6003 charges the state fire marshal with the protection and preservation of life and property in controlling the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems. The following proposed amendments to Subchapter F are necessary to implement the statute and to safeguard lives and property.

Section 34.610. Certificate of Registration.

The department proposes to add a clarification to §34.610(a) to require an actual physical address of registered firms on their certificate of registration. The State Fire Marshal's Office staff may, in the course of fulfilling their duties, have cause to go to the actual location of a registered firm. A mailing address or P.O. Box on a certificate of registration does not support this. Including a physical location on a registered firm's certificate of registration ensures that the State Fire Marshal's Office can locate and inspect a business site and more efficiently provide for the safety and wellness of all persons by ensuring the registered firm is complying with applicable statutes and rules. This change is not expected to impact regulated persons. Regulated persons would simply provide a physical address on renewal or if requested by agency staff but they are not otherwise expected to file documents with the State Fire Marshal's Office as a result of the proposed amendment.

Section 34.613. Applications.

The department proposes to amend the requirement that corporations applying for certificates of registration provide proof that their franchise tax is "in active status" rather than the outdated "Certificate of Good Standing." This amendment reflects

a change in the state comptroller's procedures and terminology and is not expected to substantively impact regulated persons.

Section 34.614. Fees.

The department proposes to amend the fee procedure requirements in §34.614(a) to allow for alternative online payment methods as those alternatives become available. This change will allow for more efficient administration of the statute and rules.

Section 34.616. Sales, Installation, and Service.

The department proposes to amend the provisions related to fire detection and fire alarm devices or systems other than residential single station in §34.616(b)(3) to delete the mention of the installation of fire sprinkler or fire extinguishers systems "other than inspection and testing of detection or supervisory devices." The provision is not intended to allow for a blanket exception to the fire extinguisher and fire sprinkler licensing statutes. Should operation of fire extinguisher or fire sprinkler systems be necessary and a properly licensed person is unavailable, a property owner may operate the fixtures that they own. This change will allow for more efficient administration of the statute and rules.

Section 34.622. Inspections/Test Labels.

The department proposes to amend the requirement for inspection/test labels in §34.622(d) by deleting "...at the time the system was installed." The amended sentence is, "If, during any inspection or test, the system does not comply with applicable standards adopted, or has a fault condition or is impaired from normal operation, the owner or the owner's representative and the local authority having jurisdiction (AHJ) must be notified of the condition and the licensee must attach, in addition to the inspection/test label, the appropriate yellow or red label, in accordance with the procedures in this section." On older systems, it is often difficult to determine when the alarm system was installed and what standards were in place at the time. In 2014, similar amendments were made to §34.623 and §34.721. The notification requirement is critical in protection and preservation of life and property.

SUBCHAPTER G. FIRE SPRINKLER RULES

Insurance Code Chapter 6003 charges the state fire marshal with the protection and preservation of life and property in controlling the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems. The following proposed amendments to Subchapter G are necessary to implement the statute and preserve life and property.

Section 34.710. Certificates of Registration.

The department proposes to add a clarification to §34.710(a) to require the actual physical address of the business location to be indicated on the certificate of registration. The State Fire Marshal's Office may, in the course of fulfilling their duties, have cause to go to the actual location of a registered firm. A mailing address or P.O. Box does not support this. A physical location on a registered firm's certificate of registration ensures that the State Fire Marshal's Office can locate and inspect the business site and efficiently provide for the safety and wellness of all persons by ensuring the registered firm is complying with applicable statutes and rules. This change is not expected to impact regulated persons. Regulated persons would provide a physical address on renewal or if requested by agency staff but they are not otherwise expected to file documents with the State Fire Marshal's Office as a result of the proposed amendment.

Section 34.713. Applications.

The department proposes to amend the requirement that corporations applying for certificates of registration provide proof that their franchise tax is "in active status" rather than the outdated "Certificate of Good Standing." This amendment reflects a change in the state comptroller's procedures and terminology and is not expected to substantively impact regulated persons. In addition, citations related to evidence of public liability insurance in §34.713(a)(3) are corrected to refer to the proper statutory requirement in Insurance Code Chapter 6003.

Section 34.714. Fees.

The department proposes to amend the fee procedure requirements in §34.714(a) to allow for alternative online payment methods as those options become available. This change will allow for more efficient administration of the statute and rules.

SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

Occupations Code Chapter 2154 charges the state fire marshal with the protection, safety, and preservation of life and property, including rules regulating: (1) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state; (2) the conduct of public fireworks displays; and (3) the safe storage of Fireworks 1.3G and Fireworks 1.4G. The following proposed amendments to Subchapter H are necessary to implement the statute and for the protection, safety, and preservation of life and property.

Section 34.808. Definitions.

The department proposes to add a new definition: "authorized retail location." The newly defined term will clarify that the location indicated in a permit for a retail location must be consistent with statute and rules and must be in a location where such sales are allowed by local ordinance. In the past, permits have been sought for locations where the local municipality does not allow fireworks sales. The State Fire Marshal's Office encourages its licensees to cooperate with local authorities. This amendment will also clarify that a retail permit does not mean local regulations do not apply. This clarification is consistent with statute and longstanding State Fire Marshal Office policy and is not expected to result in additional costs to regulated persons. Other definitions are renumbered, as appropriate.

Section 34.811. Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License.

The department proposes to add a requirement that new applicants for Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and the Flame Effects Operator License submit with the application a criminal history report from the Texas Department of Public Safety. This requirement is expected to add costs to affected applicants but it is necessary to protect the public.

Section 34.814. Fees.

The department proposes to amend the fee procedure requirements in §34.814(a) to allow for alternative online payment methods as those alternatives become available. This change will allow for more efficient administration of the statute and rules.

Section 34.817. Retail Sales General Requirements.

The department proposes to amend §34.817(q) as follows: "Shipping information, invoices, and bills of lading related to the inventory at each retail stand must be available for inspection on

request." The new proposed requirement will help the State Fire Marshal's Office personnel better administer Occupations Code Chapter 2154 and the adopted rules. Checking the shipping information will enable licensing investigators to determine if fireworks have been purchased from a licensed distributor. Generally, these invoices are specific to each particular retail stand, and provide highly useful information that can make inspections more efficient. The invoice makes determining compliance with other statutory requirements, such as the limit of a maximum of 500 cases of Fireworks 1.4G under §34.817(b). The department expects regulated persons will incur minimal costs from this amendment, as they will be required to keep the documents. Regulated persons are not expected to generate new reports or documents, merely retain for later inspection those that they already receive.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Ernest McCloud, assistant state fire marshal, has determined that for each year of the first five years the proposed amended sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of this proposal.

Mr. McCloud does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. McCloud expects that administering the proposed amendments will have the public benefit of protecting the health, safety, and welfare of the residents of this state and allow State Fire Marshal's Office personnel to more efficiently administer the regulations.

Mr. McCloud expects that the proposed amendments to 28 TAC §§34.510, 34.511, 34.610, 34.613, 34.616, 34.622, 34.710, 34,713, and 34.808 will have no impact on costs incurred by regulated persons. However, other proposed amendments may result in increased costs.

Proposed amendments to §§34.514, 34.711, and 34.811 add new requirements for a criminal history report not previously required; a background check currently costs $37.00, not including a small convenience fee.

Proposed amendment to §34.817 may result in minimal additional costs to fireworks retail locations with respect to requiring shipping information to be retained for the duration of that fireworks sales period. The actual cost of this requirement cannot be estimated at this time but it is expected to be low or have no additional costs.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined that the proposed amendments may have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses and rural communities.

For Fiscal Year 2017, there were 896 firms with fire extinguisher registrations and 3,229 individuals with fire extinguisher licenses. The Census Bureau has established the North American Industry Classification Code System (NAICS) code 423990 (other miscellaneous durable goods merchant wholesalers) for use with fire extinguisher sales combined with rental or service, and merchant wholesalers. Based on data from the Texas Comptroller of Public Accounts website, which provides online information to assist agencies in determining a proposed rule's potential adverse economic effect on small businesses (https://fmx.cpa.state.tx.us/fmx/legis/ecoeffect/), approximately 92 percent of these firms in Texas employ fewer than 100 employees and have less than $6 million in annual gross receipts. The department expects that nearly all of those firms and individuals are likely to be small or micro businesses.

For Fiscal Year 2017, there were 1,666 firms with fire alarm registrations and 8,891 individuals with fire alarm licenses. Based on data from the comptroller's website, approximately 92 percent of these firms in Texas employ fewer than 100 employees and have less than $6 million in annual gross receipts. The department expects that nearly all of those firms and individuals are likely to be small or micro businesses.

For Fiscal Year 2017 there were 712 firms with fire sprinkler registrations and 1,939 individuals with fire sprinkler licenses. Based on data from the comptroller's website, approximately 92 percent of these firms in Texas employ fewer than 100 employees and have less than $6 million in annual gross receipts. The department expects that nearly all of those firms and individuals are likely to be small or micro businesses.

For Fiscal Year 2017 there were 74 firms with fireworks related registrations and 1,127 individuals with fireworks related licenses. The NAICS code 423920 (merchant wholesale distribution of games, toys, fireworks, playing cards, hobby goods and supplies, and/or related goods) covers fireworks-related businesses. Based on data from the comptroller's website (https://fmx.cpa.state.tx.us/fmx/legis/ecoeffect/), approximately 92 percent of these firms in Texas employ fewer than 100 employees and have less than $6 million in annual gross receipts. In addition, for 2017 there were 5,085 fireworks retail permits and 677 pyrotechnic display permits issued. It is likely that nearly all fireworks retail permits and pyrotechnic display permits are used by small or micro businesses.

The department estimates that the proposed amendments will affect some individuals and firms operating in the estimated 1,100 rural communities in Texas. The department notes that many fireworks permit holders operate in rural communities and unincorporated areas. In fact, fireworks retails sales are often banned by local ordinances in urban municipalities. None of the proposed rules are expected to specifically have an adverse economic effect directly on rural communities.

The primary objectives of this proposal are to clarify the rules, efficiently administer the respective statutes, and provide for the safety of regulated persons and their customers. The department considered the following alternatives to minimize any adverse impact on small and micro businesses and rural communities while accomplishing the proposal's objectives:

(1) not proposing the amendments;

(2) proposing a different requirement for small and micro businesses or rural communities; and

(3) exempting small or micro businesses or rural communities from the proposed requirement that could create the adverse impact.

Not proposing the amendments. The purpose of this rule proposal is to clarify the intent of the regulations, efficiently administer the respective statutes, and provide for the safety of regulated persons and their customers. Without the proposal and adoption of amended rules for these subchapters, affected persons would not benefit from clarifications and the public would not benefit from improved public health and safety requirements.

Failure to propose and adopt new rules would also frustrate the purpose of Insurance Code Chapters 6001, 6002, and 6003, and Occupations Code Chapters 2154. For these reasons, the department has rejected this option.

Proposing different requirements for small and micro businesses and rural communities. The department believes that proposing different standards for small and micro business and rural communities than those included in this proposal would not provide a better option for these businesses. The department believes that the potential for public harm resulting from lessening regulatory requirements for small and micro businesses and rural communities would outweigh the potential benefit to small or micro businesses. The proposed rule amendments increase public health and safety requirements, and regulations protecting the public are also important to achieving the regulatory purpose of the proposal. For these reasons, the department has rejected this option. Excluding small and micro businesses and rural communities from applicability under the amendments is not practical, and does not make sense.

Excluding small and micro businesses and rural communities from applicability under the new sections included in this proposal. As addressed in the Public Benefit and Cost Note portion of this proposal, anticipated costs under the proposal are the result of the rule amendments. If the department excluded small and micro businesses under the amended sections, they would not incur the anticipated costs. But if the department excluded small and micro businesses under the new sections, the department would lack predictable and uniformly enforced public safety regulations. The department believes that the potential for lack of compliance with these provisions would create potential harm for affected persons and the public that would outweigh the potential benefit to small or micro businesses. For this reason, the department has rejected this option.

Protection of Public Health and Safety.

Government Code §2006.002(c-1) requires that the regulatory flexibility analysis consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The amendments to Subchapters E, F, G, and H protect the health, safety, and welfare of the residents, and buildings in Texas, through the efficient administration of Insurance Code Chapters 6001, 6002, and 6003, and Occupations Code Chapter 2154. To protect life and property in this state, it is necessary that all businesses and communities, regardless of size, comply with minimum safety requirements. Therefore, the department has determined, in accordance with Government Code §2006.002(c-1), that because the proposed amendments ensure the health, safety, and environmental and economic welfare of the state, there are no regulatory alternatives to the amendments to Subchapters E, F, G, and H in this proposal that will sufficiently protect the safety of the public.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that some of the amendments in this proposal do impose a cost on regulated persons. The department has determined that these amendments are necessary to protect the health, safety, and welfare of the residents of this state. In addition, these rules are necessary to administer rules for the protection and preservation of life and property, as contemplated by Insurance Code §§6001.001, 6001.052, 6002.001, 6003.054, and Occupations Code §2154.052. Therefore, Government Code §2001.0045(c)(6) and (9) does not require the department to repeal or amend a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the proposed rule amendments would be in effect, the amendments would not create or eliminate a government program, except for the elimination of fire extinguisher license Type R. The proposed amendments would not require the creation of new employee positions or the elimination of existing employee positions. The proposed rule amendments would not require an increase or decrease in future legislative appropriations to the agency. The proposed amendments would not directly increase or decrease fees paid to the agency. The proposed amendments would not create a new regulation. The proposed amendments may slightly expand, limit, or repeal an existing regulation. The proposed amendments are not expected to increase or decrease the number of individuals subject to the rules' applicability. And the proposed amendments should not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. Comments on the proposal must be received by the department no later than 5:00 p.m., central time, on April 8, 2019. Send one copy either by email to ChiefClerk@tdi.texas.gov; or by mail to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, by email to ChiefClerk@tdi.texas.gov; or by mail to the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

SUBCHAPTER E. FIRE EXTINGUISHER RULES

28 TAC §§34.510, 34.511, 34.514, 34.515

STATUTORY AUTHORITY. The department proposes amendments to 28 TAC §§34.510, 34.511, 34.514, and 34.515 under Government Code §417.005 and Insurance Code §§6001.051, 6001.052, and 36.001.

Government Code §417.005 states that the Commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the Commissioner.

Insurance Code §6001.051(a) specifies that the department administers Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the Commissioner may issue rules the Commissioner considers necessary to administer Chapter 6001 through the state fire marshal.

Insurance Code §6001.052(b) specifies that the Commissioner must adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the Commissioner by rule must prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Insurance Code Chapter 6001 is implemented by this rule.

§34.510. Certificates of Registration.

(a) Required. Each firm and each branch office engaged in the business must obtain a certificate of registration from the state fire marshal.

(b) Properly equipped licensed person. Before engaging in the business, each registered firm must have at least one licensed person who must be properly equipped to perform the act or acts authorized by its certificate.

(c) Types of certificates. The business activities authorized by the certificate are [~~is~~] limited to the business activities authorized under the license of its employees. A separate Type C registration is required to engage in the business of hydrostatic testing of U.S. Department of Transportation (U.S. DOT) specification fire extinguisher cylinders.

(d) Business location. Each registered firm must maintain a specific business location, and the business location must be indicated on the certificate. The business location must be a physical address, not a mailing address or P.O. Box.

(e) Shop. A registered firm must establish and maintain a shop, whether at a specific business location or in a mobile unit designed so that servicing, repairing, or hydrostatic testing can be performed. The shop must be adequately equipped to service or test all fire extinguishers or systems the registered firm installs and services. At a minimum, a firm must maintain the following:

(1) a copy of the most recently adopted edition of NFPA 10;

(2) a copy of the most recently adopted Insurance Code Chapter 6001 and this chapter;

(3) a list of manufacturers or types of portable extinguishers serviced with their respective manuals or part lists;

(4) portable scale to accurately measure extinguisher gross weights;

(5) seals or tamper indicators;

(6) temporary fire extinguishers replacements;

(7) if performing annual maintenance on carbon dioxide extinguishers, at a minimum, the following additional items are required:

(A) conductivity tester; [~~;~~] and

(B) conductivity test label; [~~.~~]

(8) if performing internal maintenance for portable extinguishers, a written notice must be kept on file indicating the registered firm performing the maintenance or, at a minimum, the following additional items are required:

(A) appropriate tools to remove and reinstall a valve head;

(B) charging adapters;

(C) Teflon tape, silicone grease, solvent, or other lubricant used;

(D) supply of spare parts for respective manufacturers and type of fire extinguishers serviced;

(E) appropriate recharge agents;

(F) agent fill funnels;

(G) light designed to be used for internal inspections;

(H) dry chemical closed recovery system or sufficient new dry chemical;

(I) leak test equipment;

(J) dry nitrogen cylinders, regulator and calibrated gauges for pressurizing cylinders;

(K) verification collar rings; and

(L) six-year maintenance labels.

(9) if performing hydrostatic testing for portable extinguishers, a written notice must be kept on file indicating the registered firm performing the test or, at a minimum, the following additional items are required:

(A) working hydrostatic test pump with flexible connection, check valves, and fittings;

(B) protective cage or barrier;

(C) calibrated gauges;

(D) drying equipment;

(E) hydrostatic test log; and

(F) hydrostatic test labels;

(10) if performing maintenance for U.S. DOT specification portable fire extinguishers, a written notice must be kept on file indicating the registered firm that would perform the hydrostatic test when required or, at a minimum, the following additional items are required:

(A) a current Type C registration issued by the State Fire Marshal's Office; and

(B) verification of registration through the U.S. DOT; [~~.~~]

(11) if installing or servicing a fixed fire extinguisher system, at a minimum, the following additional items are required:

(A) a copy of the latest adopted edition of applicable NFPA standards with respect to the type of system installed or serviced;

(B) applicable manufacturer's service manuals for the type of system; and

(C) any special tools or parts as required by the manufacturer's manual.

(f) Business vehicles. All vehicles used regularly in installation, service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certificate of registration number. The numbers and letters must be at least one inch in height and permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color of the vehicle. The certificate-of-registration number must be designated in the following format: TX ECR-number. A business vehicle must be adequately equipped for the type of service that is being provided.

(g) Branch office initial certificate of registration fees and expiration dates. The initial fee for a branch office certificate of registration is $100 and is not prorated. Branch office certificates of registration expire and renew on the same date as the certificate of registration for the registered firm's main office.

(h) Change of ownership.

(1) The total change of a firm's ownership invalidates the current certificate. To ensure continuance of the business, the new owners must submit an application for a new certificate to the state fire marshal 14 days before [~~prior to~~] the change.

(2) A partial change in a firm's ownership will require a revised certificate if it affects the firm's name, location, or mailing address.

(i) Change of corporate officers. Any change of corporate officers must be reported in writing to the state fire marshal within 14 days. This change does not require an application for a new or revised certificate.

(j) Duplicate certificates. A certificate holder must obtain a duplicate certificate from the state fire marshal to replace a lost or destroyed certificate. The certificate holder must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(k) Revised certificates. The change of a firm's name, location, or mailing address requires a revised certificate. Within 14 days after the change requiring the revision, the registered firm must submit written notification of the necessary change accompanied by the required fee to the State Fire Marshal's Office.

(l) Nontransferable. A certificate is neither temporarily nor permanently transferable from one firm to another.

(m) Initial alignment of the expiration and renewal dates of existing branches. For branch offices in existence as of the effective date of this rule, branch office certificates of registration will expire and renew on the same date as the certificate of registration issued to the main office for that firm. All fees associated with the initial alignment of expiration and renewal dates for the branch office certificate of registration will prorate accordingly.

§34.511. Fire Extinguisher Licenses.

(a) Types of licenses. Each license must be identified by type, which indicates the business activity authorized under the license.

(1) Type PL--For planning, supervising, certifying, installing, or servicing of all fixed systems other than pre-engineered systems. A system planning licensee may also perform, supervise, or certify the installation or servicing of all pre-engineered fixed systems and portable fire extinguishers.

(2) Type A--For certifying or servicing the installation of all fixed fire extinguisher systems, other than pre-engineered systems; or for installing, certifying, or servicing all pre-engineered fixed fire extinguisher systems, and certifying and servicing of portable extinguishers.

(3) Type B--For servicing, certifying, and low-pressure hydrostatic testing of portables.

(4) Type K--For installing, certifying, or servicing pre-engineered fixed fire extinguisher systems for the protection of cooking areas, and certifying and servicing portable extinguishers.

[~~(5) Type R--For installing, certifying, or servicing pre-engineered fixed residential range top fire extinguisher systems.~~]

(b) Pocket license. A licensee must carry a pocket license for identification while engaged in the activities of the business.

(c) Duplicate license. A duplicate license must be obtained from the state fire marshal to replace a lost or destroyed license. The license holder or registered firm must submit written notification of the loss or destruction, accompanied by the required fee.

(d) Revised license. The change of a licensee's registered firm or mailing address requires a revised license. Within 14 days after the change requiring the revision, the license holder or registered firm must submit written notification of the necessary change accompanied by the required fee.

(e) Restrictions.

(1) A licensee must not engage in any act of the business unless employed by a registered firm and holding an unexpired license.

(2) A license is neither temporarily nor permanently transferable from one person to another.

(3) A registered firm must notify the state fire marshal within 14 days after termination of employment of a licensee.

(4) A Type A or Type K license will not be issued to an individual unless the individual has held an apprentice permit or a Type B license for at least six months or has held a license to service fixed extinguisher systems for at least six months from another state.

[~~(5) It will not be necessary for the applicant of a Type R license to hold an apprentice permit prior to the issuance of a Type R license.~~]

§34.514. Applications.

(a) Certificates of registration.

(1) Applications for certificates and branch office certificates must be submitted on forms provided by the state fire marshal and accompanied by all other information required by Insurance Code Chapter 6001 and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office.

(2) Applications must be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For corporations, the application must be accompanied by the corporate charter of a Texas corporation, or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business. For applicants using an assumed name, the application must be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Texas Business and Commerce Code, Chapter 71. The application must also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of Insurance Code Chapter 6001 and this subchapter.

(3) For corporations, the application must also include the corporate taxpayer identification number, the charter number, and a copy of the corporation's current franchise tax certificate from the State Comptroller's Office showing it is in active status [~~"Certificate of Good Standing" issued by the state comptroller's office~~].

(4) Applications for Type C certificates must be accompanied by a copy of the U.S. DOT letter registering the applicant's facility and that issues a registration number to the facility.

(5) The applicant must comply with the following requirements concerning liability insurance.

(A) The state fire marshal will not issue a certificate of registration under this subchapter unless the applicant files a proof of liability insurance with the State Fire Marshal's Office [~~proof of liability insurance~~]. The insurance must include products and completed operations coverage.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office the certificate of insurance as required.

(C) Evidence of public liability insurance, as required by Insurance Code §6001.154, must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state.

(D) If a certificate of registration is to be issued in the name of a corporation, the corporate name must be used on the applicable insurance forms. If the corporation is obtaining a certificate of registration in an assumed name, the insurance must be issued to the corporation doing business as (dba) the assumed name. Example: XYZ Corporation, dba XXX Extinguisher Service.

(E) Insurance issued for a partnership must be issued to the name of the partnership or to the names of all the individual partners.

(F) Insurance for a proprietorship must be issued to the individual owner. If an assumed name is used, the insurance must be issued to the individual doing business as "dba" followed by [~~(dba)~~] the assumed name. Example: William Jones, dba XXX Extinguisher Service.

(b) Fire extinguisher licenses.

(1) Original applications for a license from an employee of a firm engaged in the business must be submitted on forms provided by the state fire marshal and accompanied by a criminal history report from the Texas Department of Public Safety[~~,~~] and [~~by~~] all other information required by Insurance Code Chapter 6001 and this subchapter.

(2) Applications for Type A and Type K licenses must be accompanied by a written statement from the certificate holder (employer) certifying that the applicant meets the minimum requirements of §34.511(f)(4) of this title (relating to Fire Extinguisher Licenses) and is competent to install or service fixed systems.

(3) Applications for Type PL licenses must be accompanied by one of the following documents to evidence technical qualifications for a license:

(A) proof of registration in Texas as a professional engineer; or

(B) a copy of the National Institute for Certification in Engineering Technologies (NICET) [~~(NICET's (National Institute for Certification in Engineering Technologies)~~] notification letter regarding the applicant's successful completion of examination requirements for certification at Level III for Special Hazard Systems Layout or Special Hazard Suppression Systems.

(4) All applications must indicate if the individual is an employee or agent of the registered firm.

(A) If the individual is an employee of the registered firm, the State Fire Marshal's Office may request from the registered firm verification of employment of the individual.

(B) If the individual is an agent of the fire extinguisher firm, the State Fire Marshal's Office may request that the firm [~~to~~] provide a letter or other document acceptable to the State Fire Marshal's Office, issued by the firm's insurance company, verifying the policy number and that the acts of the individual are covered by the same insurance policy required by this subchapter to obtain the firm's registration. If required, the verifying document must be submitted to the State Fire Marshal's Office before a license will be issued or when there is a change in the licensee's registered firm. Unless otherwise required by the State Fire Marshal's Office, renewal of a license does not require insurance verification unless there has been a change in the insurance carrier.

(c) Complete application required for renewal. Renewal applications for certificates of registration and licenses must be submitted on forms provided by the state fire marshal and accompanied by a criminal history report obtained through the Texas Department of Public Safety and by all other information required by Insurance Code Chapter 6001 and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office.

(d) Timely filed. A license or registration expires [~~will expire~~] at 12:00 midnight on the date printed on the license or registration. A renewal application and fee for license or registration must be postmarked on or before the date of expiration to be accepted as timely. If a renewal application is not complete but there has been no lapse in the required insurance, the applicant will have 30 days from the time the applicant is notified by the State Fire Marshal's Office of the deficiencies in the renewal application to submit any additional requirement. If an applicant fails to respond and correct all deficiencies in a renewal application within the 30-day period, a late fee may be charged.

(e) Requirements for applicants holding licenses from other states. An applicant holding a valid license in another state who desires to obtain a Texas license through reciprocity must submit the following documentation with the application in addition to all other information required by Insurance Code Chapter 6001 and this subchapter:

(1) a letter of certification from the licensing entity of another state certifying the applicant holds a valid license in that state; and

(2) additional information from the state detailing material content of any required examination used to qualify for license, including NFPA or other standards, if applicable.

(f) Apprentice permits. Each person employed as an apprentice by a firm engaged in the business must make application for a permit on a form provided by the state fire marshal, accompanied by a criminal history report from the Texas Department of Public Safety, and accompanied by the required application fee.

(g) Complete applications. The application form for a license or registration must be accompanied by the required application fee and must, within 180 days of receipt by the State Fire Marshal's Office of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6001 and this subchapter, or a new application must be submitted, including all applicable fees.

§34.515. Fees.

(a) Except for fees specified in subsection (d) of this section, all fees payable must [~~shall~~] be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or by online payment [~~if the license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority~~]. Should the department authorize other online or electronic original applications or other transactions, applicants must [~~persons shall~~] submit fees with the transaction as directed by the department, [~~or~~] the Texas OnLine Authority, or other online provider. Except for overpayments resulting from mistakes of law or fact, all fees are non-refundable.

(b) Fees are as follows.

(1) Certificates of registration:

(A) initial fee--$450;

(B) renewal fee (for two years)--$600;

(C) renewal late fee (expired 1 day to 90 days)--$225 plus $50 for each branch office operated by the registered firm;

(D) renewal late fee (expired 91 days to two years)--$450 plus $100 for each branch office operated by the registered firm;

(E) branch office initial fee--$100;

(F) branch office renewal fee (for two years)--$200.

(2) Certificate of registration (Type C):

(A) initial fee--$250;

(B) renewal fee (for two years)--$300;

(C) renewal late fee (expired 1 day to 90 days)--$125;

(D) renewal late fee (expired 91 days to two years)--$250.

(3) Fire extinguisher license (Type A, B, [~~R~~] and K):

(A) initial fee--$70;

(B) renewal fee (for two years)--$100;

(C) renewal late fee (expired 1 day to 90 days)--$35;

(D) renewal late fee (expired 91 days to two years)--$70.

(4) Fire extinguisher license (Type PL):

(A) initial fee--$70;

(B) renewal fee (for two years)--$100;

(C) renewal late fee (expired 1 day to 90 days)--$35;

(D) renewal late fee (expired 91 days to two years)--$70.

(5) Apprentice permit fee--$30.

(6) Duplicate or revised certificates, licenses, permits, or other requested changes to certificates, licenses, or permits--$20.

(7) Initial test fee (if administered by the SFMO)--$20.

(8) Retest fee (if administered by the SFMO)--$20.

(c) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(d) Late fees are required of all certificate or license holders who fail to submit complete renewal applications before the expiration of the certificate or license.

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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Texas Department of Insurance
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SUBCHAPTER F. FIRE ALARM RULES

28 TAC §§34.610, 34.613, 34.614, 34.616, 34.622

STATUTORY AUTHORITY. The department proposes amendments to 28 TAC §§34.610, 34.613, 34.614, 34.616, and 34.622 under Government Code §417.005 and Insurance Code §§6002.051, 6002.052, and 36.001.

Government Code §417.005 states that the Commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the Commissioner.

Insurance Code §6002.051(a) specifies that the department will administer Chapter 6002. Insurance Code §6002.051(b) specifies that the Commissioner may adopt rules as necessary to administer Chapter 6002, including rules the Commissioner considers necessary to administer Chapter 6002 through the state fire marshal.

Insurance Code §6002.052(b) specifies that rules adopted under §6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Insurance Code Chapter 6002 is implemented by this rule.

§34.610. Certificate of Registration.

(a) Business location. A specific business location must be maintained by each registered firm. The location must be indicated on the certificate. The business location must be a physical address, not a mailing address or P.O. Box.

(b) Designated Employee. Each registered firm must specify one full-time employee holding a license under this subchapter as the firm's designated employee on its [~~their~~] Fire Alarm Certificate of Registration Application, Form No. SF031, and on its [~~their~~] Renewal Application for Fire Alarm Certificate of Registration, Form No. SF084.

Any change in the designated employee under this section must be submitted in writing to the State Fire Marshal's Office within 14 days of the change [its] occurrence. An individual may not serve as a designated employee for more than one registered firm.

(c) Business vehicles. All vehicles regularly used in installation, service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certificate number. The numbers and letters must be at least one inch high and permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color of the vehicle. The certificate of registration number must be designated in the following format: TX ACR-number.

(d) Change of ownership.

(1) The total change of a firm's ownership invalidates the current certificate. To ensure continuance of the business, a complete application for a new certificate must be submitted to the state fire marshal at least 14 days before the [prior to such] change.

(2) A partial change in a firm's ownership requires a revised certificate if it affects the firm's name, location, or mailing address.

(e) Change of corporate officers. Any change of corporate officers must be reported in writing to the state fire marshal within 14 days. This change does not require a revised certificate.

(f) Branch Office Initial Certificate of Registration Fees and Expiration Dates. The initial fee for a branch office certificate of registration is $150 and is not prorated. Branch office certificates of registration expire and renew on the same date as the certificate of registration for the registered firm's main office.

(g) Duplicate certificates. A duplicate certificate must be obtained from the state fire marshal to replace a lost or destroyed certificate. The certificate holder must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(h) Revised certificates. The change of a firm's name, location, or mailing address requires a revised certificate. Within 14 days after the change requiring the revision, the certificate holder must submit written notification of the necessary change accompanied by the required fee.

(i) Initial Alignment of the Expiration and Renewal Dates of Existing Branches. For branch offices in existence as of the effective date of this rule, branch office certificates of registration must expire and renew on the same date as the certificate of registration issued to the main office for that firm. All fees associated with the initial alignment of expiration and renewal dates for the branch office certificate of registration must prorate accordingly.

§34.613. Applications.

(a) Approvals and certificates of registration.

(1) Applications for approvals, certificates, and branch office certificates must be submitted on the forms adopted by reference in §34.630 of this title (relating to Application and Renewal Forms) and be accompanied by all fees, documents, and information required by Insurance Code Chapter 6002 and this subchapter. An application will not be deemed complete until all required forms, fees, and documents have been received in the State Fire Marshal's Office.

(2) Applications must be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Texas Business and Commerce Code Chapter 71. The application must also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of Insurance Code Chapter 6002 and this subchapter.

(3) For corporations, the application must also include the name of each shareholder owning more than 25 percent of the shares issued by the corporation; the corporate taxpayer identification number; the charter number; a copy of the corporate charter of a Texas corporation or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business; and a copy of the corporation's current franchise tax certificate from the State Comptroller's Office showing it is in active status [certificate of good standing issued by the comptroller].

(4) A registered firm must employ at least one full-time licensed individual at each location of a main or branch office.

(5) Insurance is required as follows: [.]

(A) The state fire marshal will not issue a certificate of registration under this subchapter unless the applicant files with the State Fire Marshal's Office evidence of an acceptable general liability insurance policy.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office a certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation; partners, if any; or sole proprietor, if applicable.

(6) A firm billing a customer for monitoring is engaged in the business of monitoring and must comply with the insurance requirements of this subchapter for a monitoring firm.

(7) Applicants for a certificate of registration who engage in monitoring must provide the specific business locations where monitoring will take place and the name and license number of the fire alarm licensees at each business location. A fire alarm licensee may not serve in this capacity for a registered firm other than the firm applying for a certificate of registration. In addition, the applicants must provide evidence of listing or certification as a central station by a testing laboratory approved by the Commissioner [commissioner] and a statement that the monitoring service complies [is in compliance] with NFPA 72, as adopted in §34.607 of this title (relating to Adopted Standards).

(8) Applicants for a certificate of registration--single station must provide a statement, signed by the sole proprietor, a partner of a partnership, or by an officer of the corporation, indicating that the firm exclusively engages in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining single station devices.

(b) Fire alarm licenses.

(1) To be complete, applications for a license from an employee or agent of a registered firm must be submitted on forms provided by the state fire marshal and be accompanied by all fees, documents, a criminal history report from the Texas Department of Public Safety, and information required by Insurance Code Chapter 6002 and this subchapter. Applications must be signed by the applicant and by a person authorized to sign on behalf of the registered firm. All applicants for any type of license must successfully complete a qualifying test as required in [regarding] Insurance Code Chapter 6002 and the Fire Alarm Rules as designated by the State Fire Marshal's Office. The qualifying test, given as part of the training for residential fire alarm

technician license, must include questions regarding Insurance Code Chapter 6002 and the Fire Alarm Rules.

(2) Applicants for fire alarm technician licenses must:

(A) furnish notification from the National Institute for Certification in Engineering Technologies (NICET) [~~(National Institute for Certification in Engineering Technologies)~~] or the Electronic Security Association (ESA) [~~ESA (Electronic Security Association)~~], confirming the applicant's successful completion of the test requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(3) Applicants for a fire alarm monitoring technician license must successfully complete a technical qualifying test as designated by the State Fire Marshal's Office, or provide evidence of current registration in Texas as a registered engineer.

(4) Applicants for a residential fire alarm superintendent (single station) license must successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(5) Applicants for a residential fire alarm superintendent license must:

(A) furnish notification from NICET or ESA confirming the applicant's successful completion of the test requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(6) Applications for a fire alarm planning superintendent license must be accompanied by one of the following documents as evidence of technical qualifications for a license:

(A) proof of registration in Texas as a professional engineer; or

(B) a copy of NICET's or ESA's notification letter confirming the applicant's successful completion of the test requirements for NICET or ESA certification at Level III for fire alarm systems.

(7) An applicant for a residential fire alarm technician license must provide evidence of the applicant's successful completion of the required residential fire alarm technician training course from a training school approved by the State Fire Marshal's Office.

(c) Instructor and training school approvals.

(1) Instructor approvals. An applicant for approval as an instructor must:

(A) hold a current fire alarm planning superintendent license, residential fire alarm superintendent license, or fire alarm technician license issued by the State Fire Marshal's Office;

(B) submit a completed Instructor Approval Application, Form No. SF247, signed by the applicant, that is accompanied by all fees; and

(C) furnish written documentation of a minimum of three years of experience in fire alarm installation, service, or monitoring of fire alarm systems unless the applicant has held a fire alarm planning superintendent license, residential fire alarm superintendent license, or fire alarm technician license for three or more years.

(2) Training school approvals.

(A) An applicant for approval of a training school must submit a completed Training School Approval Application, Form No. SF 246, to the State Fire Marshal's Office. To be complete, the application must be:

(i) signed by the applicant, the sole proprietor, by each partner of a partnership, or by an officer of a corporation or organization as applicable;

(ii) accompanied by a detailed outline of the proposed subjects to be taught at the training school and the number and location of all training courses to be held within one year following approval of the application; and

(iii) accompanied by all required fees.

(B) After review of the application for approval for a training school, the state fire marshal will approve or deny the application within 60 days following receipt of the materials. A letter of denial will state the specific reasons for the denial. An applicant that is denied approval may reapply at any time by submitting a completed application that includes the changes necessary to address the specific reasons for denial.

(d) Renewal applications.

(1) In order to be complete, renewal applications for certificates, licenses, instructor approvals, and training school approvals must be submitted on the forms adopted by reference in §34.630 of this title and be accompanied by all fees, documents, a criminal history report from the Texas Department of Public Safety, and information required by the Insurance Code Chapter 6002 and this subchapter. A complete renewal application deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a postmark date that is before the expiration of the certificate or license being renewed.

(2) A licensee with an unexpired license who is not employed by a registered firm at the time of the licensee's renewal may renew that license, but [~~;~~ ~~however,~~] the licensee may not engage in any activity for which the license was granted until the licensee is employed and qualified by a registered firm.

(e) Complete applications. The application form for a license, registration, instructor approval, and training school approval must be accompanied by the required fee and must, within 180 days of receipt by the State Fire Marshal's Office of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6002 and this subchapter, or a new application must be submitted including all applicable fees.

§34.614. Fees.

(a) Except for fees specified in subsection (c) of this section, all fees payable must [~~shall~~] be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or by online payment [~~if the license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority~~]. Should the department authorize other online or electronic original applications or other transactions, persons must [~~shall~~] submit fees with the transaction as directed by the department, [~~or~~] the Texas OnLine Authority, or other online provider. Except for overpayments resulting from mistakes of law or fact, all fees are non-refundable.

(b) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(c) Fees are as follows:

(1) Certificates of registration:

(A) initial [~~Initial~~] fee--$500;

(B) renewal fee (for two years, subject to the exceptions specified in §34.610(i) of this subchapter (relating to Certificate of Registration) for the initial alignment of the expiration and renewal dates of existing branches)--$1,000;

(C) renewal late fee (expired 1 day to 90 days)--$125 plus $37.50 for each branch office operated by the registered firm;

(D) renewal late fee (expired 91 days to two years)--$500 plus $150 for each branch office operated by the registered firm;

(E) branch office initial fee--$150;

(F) branch office renewal fee (for two years)--$300;

(2) Certificates of registration--Single Station:

(A) initial fee--$250;

(B) renewal fee (for two years)--$500;

(C) renewal late fee (expired 1 day to 90 days)--$62.50;

(D) renewal late fee (expired 91 days to two years)--$250;

(E) branch office initial fee--None;

(F) branch office renewal fee (for two years)--None;

(3) Fire alarm [~~Alarm~~] licenses (fire [~~Fire~~] alarm technician license, fire [~~Fire~~] alarm monitoring technician license, residential [~~Residential~~] fire alarm superintendent (single station) license; residential [~~Residential~~] fire alarm superintendent license, fire [~~Fire~~] alarm planning superintendent license):

(A) initial fee--$120;

(B) renewal fee (for two years)--$200;

(C) renewal late fee (expired 1 day to 90 days)--$30;

(D) renewal late fee (expired 91 days to two years)--$120;

(4) Residential fire alarm technician licenses:

(A) initial fee (for one year)--$50;

(B) renewal fee (for two years)--$100;

(C) renewal late fee (expired 1 day to 90 days)--$12.50;

(D) renewal late fee (expired 91 days to two years)--$50;

(5) Training school approval:

(A) initial fee (for one year)--$500;

(B) renewal fee (for one year)--$500;

(6) Instructor approval:

(A) initial fee (for one year)--$50;

(B) renewal fee (for one year)--$50;

(7) Duplicate or revised certificate or license or other requested changes to certificates, approvals, or licenses--$20;

(8) Initial test fee (if administered by the State Fire Marshal's Office)--$20;

(9) Retest fee (if administered by the State Fire Marshal's Office)--$20.

(d) All fees are forfeited if the applicant does not appear for the scheduled test.

(e) Late fees are required of all certificate or license holders who fail to submit complete renewal applications before the expiration of the certificate or license except as provided in the Insurance Code §6002.203(g).

(f) Fees for certificates and licenses that [~~which~~] have been expired for less than two years include both renewal and late fees.

§34.616. Sales, Installation, and Service.

(a) Residential alarm (single station).

(1) Registered firms may employ persons exempt from the licensing provisions of Insurance Code §6002.155(10) to sell, install, and service residential, single station alarms. Exempted persons must be under the supervision of a residential fire alarm superintendent (single station), residential fire alarm superintendent, or fire alarm planning superintendent.

(2) Each registered firm that employs persons exempt from licensing provisions of Insurance Code §6002.155(10) is required to maintain documentation to include lesson plans and annual test results demonstrating competency of those employees regarding the provisions of Insurance Code Chapter 6002, adopted standards, and this subchapter applicable to single station devices.

(b) Fire detection and fire alarm devices or systems other than residential single station.

(1) The installation of all fire detection and fire alarm devices or systems, including monitoring equipment subject to Insurance Code Chapter 6002 must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent, or a fire alarm planning superintendent for the work permitted by the license. The licensee responsible for the planning of all fire detection and fire alarm devices or systems, including monitoring equipment subject to Insurance Code Chapter 6002, must be licensed under the ACR number of the primary registered firm. The certifying licensee must be licensed under the ACR number of the primary registered firm and must be present for the final acceptance test prior to certification.

(2) The maintenance or servicing of all fire detection and fire alarm devices or systems must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent or a fire alarm planning superintendent, for the work permitted by the license. The licensee attaching a label must be licensed under the ACR number of the primary registered firm.

(3) If the installation or servicing of a fire alarm system also includes installation or servicing of any part of a fire protection sprinkler system or a fire extinguisher system [~~other than inspection and testing of detection or supervisory devices~~], the licensing requirements of Insurance Code Chapters 6001 and 6003 must be satisfied, as appropriate.

(4) The planning, installation, and servicing of fire detection or fire alarm devices or systems, including monitoring equipment, must be performed according to standards adopted in §34.607 of this title (relating to Adopted Standards) except when the planning and installation complies with a more recent edition of the standard that has been adopted by the political subdivision in which the system is installed.

(5) Fire alarm system equipment replaced in the same location with the same or similar electrical and functional characteristics and listed to be compatible with the existing equipment, as determined

by a fire alarm planning superintendent, may be considered repair. The equipment replaced must comply with the currently [~~current~~] adopted standards but the entire system is not automatically required to be modified to meet the applicable adopted code. The local AHJ must be consulted to determine whether to update the entire system to comply with the current code and if plans or a permit is required prior to making the repair.

(6) On request of the owner of the fire alarm system, a registered firm must provide all passwords, including those for the site-specific software, but the registered firm may refrain from providing that information until the system owner signs a liability waiver provided by the registered firm.

(c) Monitoring requirements.

(1) A registered firm may not monitor a fire alarm system located in the State of Texas for an unregistered firm.

(2) A registered firm may not connect a fire alarm system to a monitoring service unless:

(A) the monitoring service is registered under Insurance Code Chapter 6002 or is exempt from the licensing requirements of that chapter; and

(B) the monitoring equipment being used is in compliance with Insurance Code §6002.25.

(3) A registered firm must employ at least one technician licensee at each central station location. Each dispatcher at the central station is not required to be a fire alarm technician licensee.

(4) A registered firm subcontracting monitoring services to another registered firm must advise the monitoring services subscriber of the identity and location of the registered firm actually providing the services unless the registered firm's contract with the subscriber contains a clause giving the registered firm the right, at the registered firm's sole discretion, to subcontract any or all of the work or service.

(5) A registered monitoring firm, reporting an alarm or supervisory signal to a municipal or county emergency services center[~~,~~] must provide, at a minimum, the type of alarm, address of alarm, name of subscriber, dispatcher's identification, and call-back phone number. If requested, the firm must also provide the name, registration number, and call-back phone number of the firm contracted with the subscriber to provide monitoring service if other than the monitoring station.

(6) If the monitoring service provided under this subchapter is discontinued before the end of the contract with the subscriber, the monitoring firm, central station, or service provider must notify the owner or owner's representative of the monitored property and the local AHJ a minimum of seven days before terminating the monitoring service. If the monitored property is a one- or two- family dwelling, notification of the local AHJ is not required.

(d) Record keeping. The firm must keep complete records of all service, maintenance, and testing on the system for a minimum of two years. The records must be available for examination by the state fire marshal or the state fire marshal's representative.

§34.622. Inspection/Test Labels.

(a) After the inspection and testing of a fire alarm system, a fire alarm inspection/test label must be completed in detail and affixed to either the inside or outside of the control panel cover or, if the system has no panel, in a permanent location. The signature of the licensee on the inspection/test label certifies that the inspection and tests performed comply with requirements of the adopted standards.

(b) If any service or maintenance is performed under the inspection or test, a service label, in addition to the inspection/test label, must be completed and attached according to the procedures in this section.

(c) For new installation, an inspection/test label may only be applied after the system has been accepted by the local authority having jurisdiction (AHJ) [~~AHJ~~].

(d) If, during any inspection or test, the system does not comply with applicable standards adopted or [~~at the time the system was installed,~~] has a fault condition, or is impaired from normal operation, the owner or the owner's representative and the local AHJ must be notified of the condition and the licensee must attach, in addition to the inspection/test label, the appropriate yellow or red label, in accordance with the procedures in this section.

(e) The local AHJ must be notified when the fault or impairment has been corrected.

(f) Inspection/test labels must remain in place for at least five years, after which they may be removed by a licensed employee or agent of a registered firm. An employee of the State Fire Marshal's Office or an authorized representative of a governmental agency with appropriate regulatory authority may remove excess labels at any time.

(g) The inspection/test label must be blue with printed black lettering.

(h) The inspection/test label must be approximately three inches high and three inches wide, and it must have an adhesive on the back that allows for label removal.

(i) Approximately a half-inch of the adhesive on the top back of the label should be used to attach the label over the previous inspection/test label to permit viewing of the previous label and the maintaining of a brief history.

(j) Inspection/test labels must contain the following information in the format of the inspection/test label, as set forth in subsection (k) of this section:

(1) DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL (all capital letters in at least 10-point bold [~~face~~] type);

(2) INSPECTION/TEST RECORD (all capital letters in at least 10-point bold [~~face~~] type);

(3) the registered firm's name, address, telephone number (either main office or branch office), and certificate of registration number of the firm performing the inspection/test;

(4) the date of the inspection performed, the licensee's signature (a stamped signature is prohibited), and license number;

(5) the type of inspection/test performed to be marked, new installation, semi-annual, quarterly, or annual;

(6) the last date of sensitivity test, if known; and

(7) the status after the inspection/test if acceptable or if yellow label attached, or if red label attached.

(k) Inspection/test label:

Figure: 28 TAC §34.622(k) (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.

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Norma Garcia
General Counsel
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SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §§34.710, 34.713, 34.714

STATUTORY AUTHORITY. The department proposes amendments to 28 TAC §§34.710, 34,713, and 34.714 under Government Code §417.005 and Insurance Code §§6003.051, 6003.052, 6003.054, and 36.001.

Government Code §417.005 states that the Commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the Commissioner.

Insurance Code §6003.051(a) specifies that the department administers Chapter 6003. Insurance Code §6003.051(b) specifies that the Commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal.

Insurance Code §6003.052(a) specifies that in adopting necessary rules, the Commissioner may use recognized standards, including standards adopted by federal law or regulation, standards published by a nationally recognized standards-making organization or standards developed by individual manufacturers.

Section 6003.054(a) specifies that the state fire marshal must implement the rules adopted by the Commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Insurance Code Chapter 6003 is implemented by this rule.

§34.710. Certificates of Registration.

(a) Required. Each person or organization, before engaging in business in this state as an independent fire protection sprinkler contractor on or for any fire protection sprinkler system, must obtain a certificate of registration from the state fire marshal. A registered firm may not subcontract with an unregistered firm to allow the unregistered firm as an independent contractor to perform any act of a fire protection sprinkler contractor.

(b) Business location. A specific business location must be maintained by each registered firm at a location that [~~which~~] must be indicated on the certificate. The business location must be a physical address, not a mailing address or P.O. Box.

(c) Posting. Each certificate must [~~shall~~] be posted conspicuously for public view at the business location.

(d) Change of ownership.

(1) The total change of a firm's ownership invalidates the current certificate. To ensure [~~assure~~] continuance of the business, a new application for a new certificate should be submitted to the state fire marshal 14 days before the [~~prior to such~~] change.

(2) A partial change in a firm's ownership will require a revised certificate if it affects the firm's name, location, or mailing address.

(e) Change of corporate officers. Any change of corporate officers must be reported in writing to the state fire marshal within 14 days. This change does not require a revised certificate.

(f) Duplicate certificates. A duplicate certificate must be obtained from the state fire marshal to replace a lost or destroyed certificate. The certificate holder must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(g) Revised certificates. The change of a firm's name, location, or mailing address requires a revised certificate. Within 14 days after the change requiring the revision the certificate holder must submit written notification of the necessary change, accompanied by the required fee.

(h) Nontransferable. A certificate is neither temporarily nor permanently transferable from one firm to another.

(i) Types.

(1) General--This certificate permits a fire protection sprinkler system contractor to conduct the planning, sales, installation, maintenance, or servicing of any fire protection sprinkler system or any part of such a system.

(2) Dwelling--This certificate permits the fire protection sprinkler system contractor to conduct the planning, sales, installation, maintenance, or servicing of a one- or two-family dwelling fire protection sprinkler system or any part of such a system.

(3) Underground Fire Main--This certificate permits a fire protection sprinkler system contractor to conduct the sales, installation, maintenance, or servicing, but not the planning, of an assembly of underground piping or conduits that conveys water with or without other agents, used as an integral part of any type of fire protection sprinkler system.

§34.713. Applications.

(a) Certificates of registration.

(1) Applications for certificates must be submitted on forms provided by the state fire marshal and must be accompanied by all other information required by Insurance Code Chapter 6003 and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office.

(2) Applications must be signed by the sole proprietor, by each partner of a partnership, or by an officer of a corporation. For corporations, the application must be accompanied by the corporate charter of a Texas corporation or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with [~~the Assumed Business or Professional Name Act,~~] Business and Commerce Code Chapter 71, As-

sumed Business or Professional Name Act. The application must also include written authorization by the applicant that permits the state fire marshal or the state fire marshal's representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business so the state fire marshal can [~~to~~] determine whether the applicant is in compliance with the provisions of Insurance Code Chapter 6003 and this subchapter.

(3) For corporations, the application must also include the corporate taxpayer identification number, the charter number, and a copy of the corporation's current franchise tax certificate from the State Comptroller's Office that shows the corporation is in active status [~~certificate of good standing issued by the state comptroller~~].

(4) An applicant must not designate as its full-time responsible managing employee (RME) a person who is the designated full-time RME of another registered firm.

(5) A registered firm must not conduct any business as a fire protection sprinkler contractor until a full-time RME, as applicable to the business conducted, is employed. An individual with an RME-General Inspector's license does not constitute compliance with the requirements of this subsection.

(6) A certificate of registration may not be renewed unless the firm has at least one licensed RME as a full-time employee before the expiration of the certificate of registration to be renewed. If an applicant for renewal does not have an RME as a full-time employee as a result of death or disassociation of an RME within 30 days preceding the expiration of the certificate of registration, the renewal applicant must inform the license section of the State Fire Marshal's Office of the employment of a full-time RME before the certificate of registration will be renewed.

(7) Insurance required.

(A) The state fire marshal must not issue a certificate of registration under this subchapter unless the applicant files with the state fire marshal's office a proof of liability insurance. The insurance must include products and completed operations coverage.

(B) Each registered firm must maintain in force and on file in the State Fire Marshall's Office the certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation; partners, if any; or sole proprietor, as applicable. Failure to do so will be cause for administrative action.

(C) Evidence of public liability insurance, as required by Insurance Code §6003.152 [~~§6001.152~~], must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state, or a certificate of insurance for surplus lines coverage, secured in compliance with Insurance Code Chapter 981, as contemplated by Insurance Code §6003.152(c) [~~§6001.152(c)~~].

(b) Responsible managing employee licenses.

(1) Original and renewal applications for a license from an employee of a firm engaged in the business must be submitted on forms provided by the state fire marshal, along with a criminal history report from the Texas Department of Public Safety and accompanied by all other information required by Insurance Code Chapter 6003 and this subchapter.

(2) The following documents must accompany the application as evidence of technical qualifications for a license:

(A) RME-General:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of the NICET [~~National Institute for Certification in Engineering Technologies (NICET's)~~] notification letter confirming the applicant's successful completion of the test requirements for certification at Level III for water-based fire protection systems layout.

(B) RME-Dwelling:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of the NICET [~~NICET's~~] notification letter confirming the applicant's successful completion of the test requirements for certification at Level II for fire protection automatic sprinkler system layout and evidence of current employment by a registered fire sprinkler contractor.

(C) RME-Underground Fire Main:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of the notification letter confirming at least a 70 percent grade on the test covering underground fire mains for fire protection sprinkler systems, administered by the State Fire Marshal's Office or an outsource testing service.

(D) RME-General Inspector:

(i) a copy of the NICET [~~NICET's~~] notification letter confirming the applicant's successful completion of the examination requirements for certification at Level II for Inspection and Testing of Water-Based Systems; and

(ii) evidence of current employment by a registered fire protection sprinkler system contractor.

(c) Complete applications. The application form for a license or registration must be accompanied by the required fee and must, within 180 days of receipt by the department of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6003 and this subchapter, or a new application must be submitted including all applicable fees.

§34.714. Fees.

(a) Except for fees specified in subsection (b) of this section, all fees payable must [~~shall~~] be submitted by check or money order made payable to the Texas Department of Insurance or the State Fire Marshal's Office, or by online payment [~~if the license is renewable over the internet, where the renewal application is to be submitted under the Texas OnLine Project, in which case fees shall be submitted as directed by the Texas OnLine Authority~~]. Should the department authorize other online or electronic original applications or other transactions, applicants must [~~persons shall~~] submit fees with the transaction as directed by the department, [~~or~~] the Texas OnLine Authority, or other online provider. Except for overpayments resulting from mistakes of law or fact, all fees are nonrefundable and non-transferable.

(b) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(c) Fees are as follows:

(1) Certificates of registration:

(A) all initial applications must [~~shall~~] include an application fee of--$50;

(B) initial fee--$900;

(C) renewal fee (for two years)--$1,800;

(D) renewal late fee (expired 1 day to 90 days)--$450;

(E) renewal late fee (expired 91 days to two years)--$900;

(2) Certificates of registration--(Dwelling or Underground fire main):

(A) all initial applications must [~~shall~~] include an application fee of--$50;

(B) initial fee--$300;

(C) renewal fee (for two years)--$600;

(D) renewal late fee (expired 1 day to 90 days)--$150;

(E) renewal late fee (expired 91 days to two years)--$300;

(3) Responsible managing employee license (General):

(A) initial fee--$200;

(B) renewal fee (for two years)--$350;

(C) renewal late fee (expired 1 day to 90 days)--$100;

(D) renewal late fee (expired 91 days to two years)--$200;

(4) Responsible managing employee licenses (Dwelling, or Underground fire main):

(A) initial fee--$150;

(B) renewal fee (for two years)--$200;

(C) renewal late fee (expired 1 day to 90 days)--$75;

(D) renewal late fee (expired 91 days to two years)--$150;

(5) Responsible managing employee license (General Inspector):

(A) initial fee--$50;

(B) renewal fee (for two years)--$100;

(C) renewal late fee (expired 1 day to 90 days)--$25;

(D) renewal late fee (expired 91 days to two years)--$50;

(6) Duplicate or revised certificate or license or other requested changes to certificates or licenses--$35;

(7) Test fee (if administered by the State Fire Marshal's Office)--$50.

(d) Late fees are required of all certificate or license holders who fail to submit renewal applications before their expiration dates.

(e) A license or registration expires [~~shall expire~~] at 12:00 midnight on the date printed on the license or registration. A renewal application and fee for license or registration must be postmarked on or before the date of expiration to be accepted as timely. If a renewal application is not complete but there has been no lapse in the required insurance, the applicant will [~~shall~~] have 30 days from the time the applicant is notified by the State Fire Marshal's Office of the deficiencies in the renewal application to submit any additional requirement. If an applicant fails to respond and correct all deficiencies in a renewal application within the 30-day period, a late fee may be charged.

(f) Holders of certificates and licenses that [~~which~~] have been expired for less than two years cannot be issued new certificates or licenses.

(g) Fees for certificates and licenses that [~~which~~] have been expired for less than two years include both renewal and late fees.

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

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SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §§34.808, 34.811, 34.814, 34.817

STATUTORY AUTHORITY. The department proposes amendments to 28 TAC §§34.808, 34.811, 34.814, and 34.817 under Government Code §417.005, Occupations Code §2154.051 and §2154.052, and Insurance Code §36.001.

Government Code §417.005 states that the Commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the Commissioner.

Occupations Code §2154.051 states the Commissioner must determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays.

Occupations Code §2154.052 states that the Commissioner must adopt and the state fire marshal must administer rules the Commissioner considers necessary for the protection, safety, and preservation of life and property.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Occupations Code Chapter 2154 is implemented by this rule.

§34.808. Definitions.

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

(1) Acceptor building--A building that is exposed to embers and debris emitted from a donor building.

(2) Agricultural, industrial, or wildlife control permits--Permits authorizing the holder to use Fireworks 1.3G for specified purposes in these business activities.

(3) Authorized retail location--A retail location that complies with the requirements of statute and rules and with a permit, and that is not prohibited by a local ordinance.

(4) [~~(3)~~] Bare wiring--Any electrical cable or cord any part of which has the insulating cover broken or removed, exposing bare wire.

(5) [~~(4)~~] Barricade--A natural or artificial barrier that will effectively screen a magazine, building, railway, or highway from the effects of an explosion in a magazine or building containing explosives. It must be of a height that a straight line from the top of any side wall of a building, or magazine containing explosives to the eave line of any magazine, or building, or to a point 12 feet above the center of a railway or highway, will pass through such natural or artificial barrier.

(6) [~~(5)~~] Barricade, artificial--An artificial mound or revetted wall of earth of a minimum thickness of one foot.

(7) [~~(6)~~] Barricade, natural--Natural features of ground, such as hills, or timber of sufficient density that the surrounding exposures that require protection cannot be seen from the magazine or building containing explosives when the trees are bare of leaves.

(8) [~~(7)~~] Barricade, screen type--Any of several barriers for containing embers and debris from fires and deflagrations in process buildings that could cause fires and explosions in other buildings. Screen type barricades must be constructed of metal roofing, one-inch [~~inch~~] or [~~a~~] half-inch mesh screen or equivalent material. A screen-type barricade extends from the floor level of the donor building to a height that a straight line from the top of any side wall of the donor building to the eave line of the acceptor building will go through the screen at a point not less than five feet from the top of the screen. The top five feet of the screen are inclined at an angle of between 30 and 45 degrees, toward the donor building.

(9) [~~(8)~~] Breakaway construction--A general term that applies to the principle of purposely providing a weak wall so that the explosive effects can be directed and minimized. The term "weak wall" as used in these sections refers to a weak wall and roof, or weak roof. The term "weak wall" is used in a relative sense as compared to the construction of the entire building. The design strength of the weak wall will vary as to the building construction, as well as to the type and quantity of explosive or pyrotechnic materials in the building. The materials used for weak wall construction are usually light gauge metal, plywood, hardboard, or equivalent lightweight material, and the material is purposely selected to minimize the danger from flying missiles. The method of attachment of the weak wall must be constructed to aid the relief of blast pressure and fireball.

(10) [~~(9)~~] Bulk storage, Fireworks 1.4G--The storage of 500 or more cases of Fireworks 1.4G.

(11) [~~(10)~~] Business--The manufacturing, importing, distributing, jobbing, or retailing of permissible fireworks; acting as a pyrotechnic operator; conducting multiple public fireworks displays; or using fireworks for agricultural, wildlife, or industrial purposes.

(12) [~~(11)~~] Buyer--Any person or group of persons offering an agreed-upon [~~agreed upon~~] sum of money or other considerations to a seller of fireworks.

(13) [~~(12)~~] CFR--The Code of Federal Regulations, a codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government. The Code is divided into 50 titles. The titles are divided into chapters, which are further subdivided into parts.

(14) [~~(13)~~] Commissioner--The Commissioner of Insurance.

(15) [~~(14)~~] Department--The Texas Department of Insurance.

(16) [~~(15)~~] Donor building--A process building from which embers and burning debris are emitted during a fire.

(17) [~~(16)~~] DOT--The United States Department of Transportation (U.S. DOT).

(18) [~~(17)~~] Fireworks plant--All land [~~lands~~], and buildings [~~building thereon,~~] used for or in connection with the manufacture processing of fireworks. It includes storage facilities used in connection with plant operation.

(19) [~~(18)~~] Firm--A person, partnership, corporation, or association.

(20) [~~(19)~~] Flame effects operator--An individual who, by experience, training, or examination has demonstrated the skill and ability to safely assemble, conduct, or supervise flame effects in accordance with §2154.253, Occupations Code.

(21) [~~(20)~~] Generator--Any device driven by an engine and powered by gasoline or other fuels to generate electricity for use in a retail fireworks stand.

(22) [~~(21)~~] Highway--The paved surface or, where unpaved, the edge of a graded or maintained public street, public alley, or public road.

(23) [~~(22)~~] Indoor retail fireworks site--A retail fireworks site other than a retail stand that sells Fireworks 1.4G from a building or structure.

(24) [~~(23)~~] Immediate family member--The spouse, child, sibling, parent, grandparent, or grandchild of an individual. The term includes a stepparent, stepchild, and stepsibling and a relationship established by adoption.

(25) [~~(24)~~] License--The license issued by the state fire marshal to a person or a fireworks firm authorizing same to engage in business.

(26) [~~(25)~~] Licensed firm--A person, partnership, corporation, or association holding a current license.

(27) [~~(26)~~] Magazine--Any building or structure, other than a manufacturing building, used for storage of Fireworks 1.3G.

(28) [~~(27)~~] Manufacturing--The preparation of fireworks mixes and the charging and construction of all unfinished fireworks, except pyrotechnic display items made on site by qualified personnel for immediate use when the operation is otherwise lawful.

(29) [~~(28)~~] Master electric switch--Manually operated device designed to interrupt the flow of electricity.

(30) [~~(29)~~] Mixing building--A manufacturer's building used for mixing and blending pyrotechnic composition, excluding wet sparkler mixes.

(31) [~~(30)~~] Multiple public display permit--A permit issued for the purpose of conducting multiple public displays at a single approved location.

(32) [~~(31)~~] Nonprocess building--Office buildings, warehouses, and other fireworks plant buildings where no explosive compositions are processed or stored. A finished firework is not considered an explosive composition.

(33) [~~(32)~~] Open flame--Any flame that is exposed to direct contact.

(34) [~~(33)~~] Outsource testing service--The testing service selected by the state fire marshal to administer certain designated qualifying tests for licenses under this subchapter.

(35) [~~(34)~~] Process building--A manufacturer's mixing building or any building in which pyrotechnic or explosive composition is pressed or otherwise prepared for finishing and assembling.

(36) [~~(35)~~] Public display permit--A permit authorizing the holder to conduct a public fireworks display using Fireworks 1.3G, on a single occasion, at a designated location, and during a designated period.

(37) [~~(36)~~] Retail fireworks site--The structure from which Fireworks 1.4G are sold and in which Fireworks 1.4G are held pending retail sale, and other structures, vehicles, or surrounding areas subject to the care and control of the retailer, owner, supervisor, or operator of the retail location.

(38) [~~(37)~~] Retail stand--A retail site that sells Fireworks 1.4G over the counter to the general public who always remain outside the structure.

(39) [~~(38)~~] Safety container--A container especially designed, tested, and approved for the storage of flammable liquids.

(40) [~~(39)~~] School--Any inhabited building used as a classroom or dormitory for a public or private primary or secondary school or institution of higher education.

(41) [~~(42)~~] Selling opening--An open area, including the counter, through which fireworks are viewed and sold at retail.

(42) [~~(41)~~] Storage facility--Any building, structure, or facility in which finished Fireworks 1.4G are stored, but in which no manufacturing is performed.

(43) [~~(42)~~] Supervisor--A person who is 18 years or older and who is responsible for the retail fireworks site during operating hours.

(44) [~~(43)~~] Walk door--An opening through which retail stand attendants can freely move but which can be secured to keep the public from the interior of the stand.

§34.811. Requirements, Pyrotechnic Operator License, Pyrotechnic Special Effects Operator License, and Flame Effects Operator License.

(a) Applicants for a pyrotechnic operator license, pyrotechnic special effects operator license or flame effects operator license must take a written test and obtain at least a passing grade of 70 percent. Written tests may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The content, frequency, and location of the tests must be designated by the state fire marshal.

(b) Examinees who fail may file a retest application accompanied by the required fee.

(c) An applicant may only schedule each type of test three times within a twelve-month period.

(d) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license; otherwise, the test is voided and the individual will have to pass the test again.

(e) The state fire marshal may waive a test requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(f) A licensee whose license has been expired for two years or longer and makes application for a new license must pass another test.

(g) A pyrotechnic operator license will not be issued to any person who fails to meet the requirements of subsection (a) of this section and the following:

(1) assisted in conducting at least five permitted or licensed public displays in Texas under the direct supervision of and verified in writing by a pyrotechnic operator licensed in Texas;

(2) be at least 21 years of age.

(h) The application must be accompanied by a criminal history report from the Texas Department of Public Safety.

(i) [~~(h)~~] The pocket license document issued along with the regular license document is for identification purposes only and must be carried by the licensee when engaged in the business.

§34.814. Fees.

(a) Fees payable to the department and required by the Occupations Code Chapter 2154 and this subchapter, must [~~shall~~] be paid by cash, money order, [~~or~~] check, or by online payment. Money orders and checks must [~~shall~~] be made payable to the Texas Department of Insurance. Except for overpayments resulting from mistakes of law or fact, or credits for unused retail fireworks permits, all fees are nonrefundable.

(b) Fees payable to the department must [~~shall~~] be paid at the Office of the State Fire Marshal in Austin, or mailed to an address specified by the state fire marshal. Retail permits may also be obtained through participating licensed firms. See §34.815 of this title (relating to Retail Permits).

(c) Fees for tests administered by an outsource testing service are payable to the testing service in the amount and manner required by the testing service.

(d) Fees are [~~shall be~~] as follows:

(1) manufacturer license:

(A) initial fee--$1,000;

(B) renewal fee (before [~~prior to~~] expiration)--$1,000;

(C) renewal late fee (expired 1 day to 90 days)--$500;

(D) renewal late fee (expired 91 days to two years)--$1,000;

(2) distributor license:

(A) initial fee--$1,500;

(B) renewal fee (before [~~prior to~~] expiration)--$1,500;

(C) renewal late fee (expired 1 day to 90 days)--$750;

(D) renewal late fee (expired 91 days to two years)--$1,500;

(3) jobber license:

(A) initial fee--$1,000;

(B) renewal fee (before [~~prior to~~] expiration)--$1,000;

(C) renewal late fee (expired 1 day to 90 days)--$500;

(D) renewal late fee (expired 91 days to two years)--$1,000;

(4) pyrotechnic special effects operator license:

(A) initial fee--$45;

(B) renewal fee (before [~~prior to~~] expiration)--$25;

(C) renewal late fee (expired 1 day to 90 days)--$22.50;

(D) renewal late fee (expired 91 days to two years)--$45;

(5) pyrotechnic operator license:

(A) initial fee--$45;

(B) renewal fee (before [~~prior to~~] expiration)--$25;

(C) renewal late fee (expired 1 day to 90 days)--$22.50;

(D) renewal late fee (expired 91 days to two years)--$45;

(6) multiple public display permit:

(A) initial fee--$400;

(B) renewal fee (before [~~prior to~~] expiration)--$400;

(7) retail permit--$20;

(8) single public display permit--$50;

(9) agricultural, industrial, and wildlife control permits--$10;

(10) flame effects operator:

(A) initial fee--$45;

(B) renewal fee (before [~~prior to~~] expiration)--$25;

(C) renewal late fee (expired 1 day to 90 days)--$22.50;

(D) renewal late fee (expired 91 days to two years)--$45;

(11) Tests administered by the State Fire Marshal's Office:

(A) initial test fee--$20;

(B) retest fee--$20.

(e) A renewal application for a license accompanied by the renewal fee deposited with the United States Postal Service is deemed to be timely filed when its envelope bears a legible postmark on or before the expiration date of the license being renewed. Any renewal application postmarked after the expiration date must be accompanied by the renewal fee and the appropriate late fee.

(f) Holders of licenses that [~~which~~] have been expired for less than two years cannot be issued new licenses.

§34.817. Retail Sales General Requirements.

(a) A supervisor, 18 years of age or older, must [~~shall~~] be on duty during all phases of operation. It is [~~shall be~~] the responsibility of the permit holder as well as the supervisor to comply with or require compliance with the fireworks rules.

(b) A building with more than 350 linear feet of fireworks counter display or containing a total of 500 or more cases of Fireworks 1.4G for sales or storage by a retailer must [~~shall~~] comply with §34.823 of this title (relating to Bulk Storage of Fireworks 1.4G), except as provided by §34.832, of this subchapter (related to Specific Requirements for Retail Fireworks Sites Other Than Stands).

(c) Heat-sealing of packages within retail fireworks sites is prohibited.

(d) Each retail fireworks site determined to have fire danger external of the sales area must [~~shall~~] be provided with equipment or facilities that are capable of extinguishing small exterior fires that would threaten the retail stand. Retail sales in other than a stand must [~~shall~~] have a fire extinguisher rated not less than 2-A. An extinguisher must [~~shall~~] be located within 75 feet walking distance from any point in the building, and each extinguisher must [~~shall~~] cover a floor area not greater than 1000 square feet per unit of "A" rating.

(e) An unobstructed pathway to walk doors must [~~shall~~] be maintained within the retail fireworks site during selling operation.

(f) The display, offer for sale, or sales of fireworks from tents and motor vehicles is prohibited. Fireworks may not be sold or stored for future sale at any inhabited dwelling, house, apartment, or other structure used in whole or in part as a home or place of abode by any person or persons.

(g) Smoking is [~~shall~~] not [~~be~~] permitted in the retail fireworks site. The presence of lighted cigars, cigarettes, or pipes within 10 feet of any site where fireworks are sold or stored is prohibited. "Fireworks" and "No Smoking" signs in letters not less than four inches high must [~~shall~~] be conspicuously posted on the inside and outside of each entrance door and at several locations inside the building.

(h) The consumption or possession of alcoholic beverages in any retail fireworks site is prohibited. No retail sales personnel inside the facility or any supervisor may [~~shall~~] be under the influence of or consume alcoholic beverages while on duty.

(i) A retail fireworks site may only sell fireworks, fireworks promotional items and accessories and those items listed in the Occupations Code §2154.002(4). The display and offer for sale, or sales of fireworks within any structure or building where any other business or any other merchandise is sold is prohibited.

(j) A retail permit is [~~shall be~~] required for each retail fireworks site offering fireworks for sale during selling season and must [~~shall~~] be posted in the sales area.

(k) The display or offer for sale or sales of fireworks from single or multifamily residential structures is prohibited.

(l) All retail fireworks sites must furnish parking off the highway.

(m) An area of at least 10 feet in width on all sides of a retail fireworks site must [~~shall~~] be kept free of high grass, empty cardboard boxes and trash.

(n) Fireworks must [~~shall~~] not be displayed or stored behind glass through which direct sunlight will shine on the fireworks.

(o) Fireworks offered for sale to the general public in this state must [~~shall~~] conform to the labeling requirements of the United States Consumer Product Safety Commission and the United States Department of Transportation. Only labeling specifications or requirements mandated by either of these agencies is [~~shall be~~] required for the labeling of items offered for sale in Texas.

(p) Internal combustion engines must [~~shall~~] not be operated inside a retail fireworks sales site.

(q) Shipping information, invoices, and bills of lading related to the inventory at each retail stand must be available for inspection on request.

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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Norma Garcia
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.32

The General Land Office (GLO) proposes amendments to 31 Texas Administrative Code (TAC) §15.32, relating to Certification Status of the Cameron County Dune Protection and Beach Access Plan (Plan). Cameron County has adopted an Erosion Response Plan (ERP) and has proposed amendments to the Plan, which include the ERP, an increase in the County's Beach User Fee (BUF), authorization to charge a seasonal BUF at Beach Access 3, information on the County's Trash Refund Program, an updated off-beach parking inventory, references to and inclusion of the County's ERP as an appendix to the Plan, non-substantive corrections and edits, and modifications to make the Plan consistent with state law. The County's ERP and Plan include the establishment of a Building Setback Line (BSL), an Exemption Petition process for authorization of construction seaward of the BSL, stricter construction standards for construction seaward of the BSL, specifications for a recommended storm protection dune, a detailed inventory of public beach access points and amenities, and a schedule for public beach access improvements. The GLO proposes to add new subsection §15.32(e) to certify the amended Plan, including the ERP, as consistent with state law.

Copies of the County's Plan amendments and ERP can be obtained by contacting the Cameron County Parks and Recreation Department at 33174 State Park Road 100, South Padre Island, Texas 78597; (956) 761-3700, or the GLO's Archives and Records Division, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, (512) 463-5277.

BACKGROUND OF THE PROPOSED AMENDMENTS

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Texas Administrative Code (31 TAC §§15.3, 15.7, and 15.8), a local government with jurisdiction over Gulf coast beaches must submit its Plan, Beach User Fee Plan (BUF Plan), and any proposed amendments to the Plan or BUF Plan to the GLO for certification. If appropriate, the GLO will certify that the Plan is consistent with state law by amendment of a rule, as authorized in Texas Natural Resources Code §§61.011(d)(5), 61.015(b), and 63.121. The certification by rule reflects the state's certification of the Plan; however, the text of the Plan is not adopted by the GLO, as provided in 31 TAC §15.3(o)(4).

Pursuant to Section 33.607 of the Texas Natural Resources Code and 31 TAC §15.3 and §15.17, a local government with jurisdiction over Gulf coast beaches must develop an ERP that consists of a plan for reducing public expenditures for erosion and storm damage losses to public and private property, including public beaches. The local government must submit its ERP to the GLO for certification as consistent with state law. The certified ERP is attached to the local government's Plan as an appendix and is an amendment to the Plan.

On December 11, 2018, the Cameron County Commissioner's Court adopted Order No. 2018O12017 to adopt the ERP as an appendix to the Plan and adopted various other amendments to the Plan, including an increase in the BUF amount in accordance with 31 TAC §15.8 and Texas Natural Resources Code (TNRC) §61.022(c). The order becomes effective upon the GLO's certification of the ERP and other amendments to the Plan. The ERP and Plan were submitted to the GLO with a request for certification of the ERP and other amendments to the Plan as consistent with state law. The Plan amendments were submitted in accordance with 31 TAC §15.3 and TNRC Chapters 61 and 63, and the ERP was submitted in accordance with TNRC §33.607 and 31 TAC §15.17.

Cameron County is a coastal county consisting of areas bordering Willacy County to the north, Hidalgo County to the west, the Gulf of Mexico to the east, and the Mexican State of Tamaulipas to the south. The County's Dune Protection and Beach Access Plan was first adopted on September 20, 1994, and most recently amended to provide for the closure of a beach and associated access points during space flight activities, which became effective on April 10, 2014.

ANALYSIS OF PLAN AMENDMENTS AND GLO'S PROPOSED AMENDMENTS TO 31 TAC §15.32.

As provided in 31 TAC §15.3(o), the GLO must grant or deny certification of an ERP or amendments to local government dune protection and beach access plans. The proposed amendments to Cameron County's Plan include an increase in the County's Beach User Fee (BUF), authorization to charge a seasonal BUF at Beach Access 3, information on the County's Trash Refund Program, an updated off-beach parking inventory, authorization of fibercrete in certain circumstances, incorporation of references to the proposed ERP, and non-substantive grammatical and procedural edits and clarifications. The Plan also adopts a variance from 31 TAC §15.6(f)(3) to allow a small amount of impervious cover outside the footprint of the habitable structure in eroding areas for specific purposes such as to stabilize pervious pavers and utilities. The GLO finds that these amendments are consistent with state law.

As provided in 31 TAC §15.8, local governments may request an increase in the existing BUF provided that the local government demonstrates that there are additional costs to the local government for providing public services and facilities directly related to the public beach. The proposed amendments to the BUF Plan increase the BUF for daily fees from $12 to $15 dollars per vehicle, from $25 to $30 for buses, and from $25 to $35 for 30-day passes. The BUF will be charged at the County's beachfront parks all year and at Beach Access 3 and 6 from March 1 through Labor Day weekend. Cameron County ensures free access to the public beach at other parks as described below. The County will operate a Trash Refund Program at Beach Access 5 and 6 from March 1 through Labor Day. The program offers a $5 refund of the daily BUF fee when a full trash bag is returned by 7:00 p.m. on the same day.

Beach Access 3 and 6 do not have a BUF during the time period from immediately after Labor Day through March 1. In addition, Boca Chica Beach does not have a BUF, and free parking is provided all year at Beach Access 4 (east and west of Park Road 100) and Beach Access 5 (west of Park Road 100). Pedestrians and bicyclists are never charged a BUF.

The County indicates that the BUF increase is necessary due to the continuous rise of expenses for beach-related services, such as litter abatement and maintaining sanitary restrooms, and to offset the cost of recent and ongoing re-development and public access improvements to both E.K. Atwood Park and Isla Blanca Park. The County also states that the proposed BUF increase will help fund an additional crew, purchase of equipment, and maintenance of recently constructed beach access parks and amenities at both E.K. Atwood Park and Isla Blanca Park. The County's short-term goals for the increased BUF revenue include completion of the Gulf-side improvements at Isla Blanca Park, improvements to the existing public dune walkover at Beach Access 3, pervious parking for Beach Access 5 (west), and extending Beach Patrol services at Isla Blanca Park and one-half mile north of Beach Access 5 (E.K. Atwood). The total estimated cost of the short-term projects is approximately $23,385,000. The County's long-term goals include adding water and sewer services as well as rinse stations and restrooms to Beach Access 4, BUF collection system upgrades, large-scale improvements at Andy Bowie Park, and construction of a new public dune walkover, public pavilion, rinse station, and restrooms at Beach Access 3. The total estimated cost of the long-term projects is approximately $17,500,000.

Based on the information provided by the County, the GLO has determined that the BUF increase is reasonable because it does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services, including enhanced amenities, does not unfairly limit public use of and access to and from public beaches in any manner, and is consistent with 31 TAC §15.8 of the Beach/Dune Rules and the Open Beaches Act. Therefore, the GLO finds that the changes to the Plan are consistent with state law.

Amendments to the Plan also include an updated parking inventory for off-beach parking areas. Additional parking spaces were created at Beach Access 3, bringing the total number of parking spaces available there from 56 to 142, all located on the east side of Park Road 100. The Plan was updated to reflect the addition of a total of 54 parking spaces at Beach Access 4 on the east side of Park Road 100, and 66 parking spaces on the west side of Park Road 100. Beach Access 5 has 128 public parking spaces east of Park Road 100, which is a reduction from the previous Plan's number of 196. This reduction was due to the creation of a new pavilion and amenities at Beach Access 5 (E.K. Atwood Park). Beach Access 5 also has 58 public beach access parking spaces on the west side of Park Road 100. This updated parking inventory ensures that the County remains compliant with a variance obtained in 2006 for meeting the presumptive one-half mile criteria for beach access being preserved in areas where vehicles are prohibited from the beach, which is required under 31 TAC §15.7(h)(1). In order to maintain permission for the County to keep the beach closed to vehicles, 88 additional parking spaces over the required number had to be provided, and the County has demonstrated compliance in the updated parking inventory.

The County's proposed ERP, which is being adopted as an appendix to the Plan, establishes a Building Setback Line (BSL), which is 230 feet landward from the line of vegetation, and includes a 30-foot wide buffer area for dune migration. This setback facilitates the purpose of TNRC §33.607 by reducing public expenditures for erosion and storm damage losses to private property by requiring construction to be farther from the shoreline, therefore providing better protection from storm damage. The ERP also allows the use of fibercrete beneath the footprint of habitable structures in certain locations. This provision is cost-saving since, in the event of a storm, fibercrete is less expensive and easier to clean up than other types of impervious cover. Also, less sand is removed from the beach during clean-up of fibercrete. The use of fibercrete is consistent with 31 TAC §15.6.

In addition, the ERP contains plans for preservation, expansion, and enhancement of the dune system. According to TNRC §33.607, dunes are the first line of protection against storm surge and erosion, and they are an essential aspect of the goals of the ERP. The ERP lists optimal measurements for the recommended storm protection dune with the goal of facilitating the minimal amount of protection from a single 100-year storm event, in accordance with guidance from FEMA (Coastal Construction Manual Principles and Practices of Planning, Siting, Designing, Constructing, and Maintaining Residential Buildings in Coastal Areas (Fourth Edition)).

The proposed ERP includes criteria for exemption from the prohibition of construction seaward of the BSL in cases where there is no practicable alternative, as well as a checklist containing the additional materials required to be submitted with the Exemption Petition. For construction seaward of the BSL, an applicant must submit an Exemption Petition in addition to an application for a beachfront construction certificate and dune protection permit. The Exemption Petition requires plans and certifications for the structure to be sealed by a professional engineer licensed in the State of Texas. Under the Exemption Petition, structures must have a minimum of a two-foot freeboard above FEMA's base flood elevation to the finished floor elevation of the lowest habitable floor and have no enclosures below base flood elevation. Also, habitable structures must be built to be feasibly relocated, and the location of structures must be landward of the landward toe of the foredune ridge.

A local government may request GLO certification of a plan amendment that includes a variance from a requirement under 31 TAC Chapter 15. Cameron County's proposed amendments to its Plan include a variance from 31 TAC §15.5(b)(3) and §15.6(f)(3) to allow minimal impervious cover outside the footprint of a habitable structure in eroding areas, using concrete or another impervious surface for specific purposes so long as its area does not exceed 5% of the footprint of the habitable structure. Since Cameron County is one of the windiest and driest areas along the Texas coast, increased sediment transport of sand means that stabilization of pervious materials as listed in the ERP may necessitate concrete curbs not wider than six inches or more than ten inches high to preserve the integrity of permeable paving. In addition, and for the same reasons, limited use of concrete is allowed if required to stabilize certain utilities. The use of impervious cover of up to 5% of the area of the footprint of the habitable structure is only allowed in non-eroding areas under §15.5(b)(3) and §15.6(f)(3). The GLO finds that the dry environment coupled with the enhanced protective standards adopted in the ERP ensure the variance is as protective as current rules since the allowances have appropriately limited the authorized uses, and the percentage of impervious surfaces allowed and does not include allowances for any slabs.

FISCAL AND EMPLOYMENT IMPACTS

Mr. David Green, Deputy Director for the GLO's Coastal Resources Division, has determined that for each year of the first five years the amended rule as proposed is in effect, there will be minimal, if any, fiscal implications to the state government as a result of enforcing or administering the amended rule. There will be costs associated with the County's implementation of its ERP provisions and the BUF. The cost of implementing the ERP provisions is hard to determine but, presumably, will be largely absorbed through the County's existing permitting system. The County projects that it will collect between $5.1 million and $5.6 million in net BUF revenue for each year of the first five years the proposed section is in effect. The County estimates that its actual costs for beach-related services will be between $7.4 million and $8 million for the first five years the proposed section will be in effect. The County will spend more on beach-related services than they will collect in BUF. These costs will presumably be absorbed through the funding mechanisms the County has used to date.

Mr. Green has determined that the proposed amendment will minimally affect the costs of compliance for large and small businesses that use the beach where the BUF increase will be implemented. The costs are difficult to determine because the impacts will be case specific, and the proposed changes relate to parking in beach parks or on the beach and are not otherwise related to the permitting or restriction of business activities. The impact of the fee increase is mitigated by the Trash Refund Program as well as the existence of no-fee areas at Boca Chica Beach and Beach Access 4, and the fact that the BUF will not be charged after the close of the summer season at Beach Access 3 and Beach Access 6. Mr. Green has also determined that for each year of the first five years the proposed amendments are in effect, there will be no impacts to the local economy.

Mr. Green has determined that there may be fiscal implications to the local government or additional costs of compliance for large and small businesses or individuals resulting from proposed new rules for implementation of the Erosion Response Plan. However, these fiscal impacts cannot be estimated with certainty at this time, since development plans for construction seaward of the setback line and the specific content of these plans are determined on a case-by-case basis depending on the type of construction. In addition, it is the opinion of the GLO that the costs of implementation of the provisions for construction in the Erosion Response Plan will be offset by a reduction in public expenditures for erosion and storm damage losses.

Likewise, costs of compliance for businesses or individuals will be offset by reduction in losses due to storm damage. New structures that are constructed behind the building setback line will have reduced losses because of a reduction in the intensity of storm surge on properties and structures and a delayed exposure to erosion for both. Additionally, the enhanced dune restoration and construction conditions will result in increased protection for structures that are located landward of the building setback line. New structures constructed seaward of the building setback line will have reduced losses and erosion because of stricter building standards and improvements in storm protection through enhanced foredune ridges. In addition, the presumption of compliance with dune mitigation sequence requirements for avoidance and minimization will simplify and reduce the cost to developers for crafting mitigation plans for construction seaward of the dune protection line.

GLO has determined that the proposed rulemaking will have no adverse local employment and that no impact statement is required pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Mr. Green has determined that the public will be affected by the increase of the BUF. Individuals will be required to pay a larger daily and 30-day fee. However, the Plan includes no-fee areas of the public beach, mitigating the impact of the BUF increase on individuals, as required by 31 TAC §15.8(h). Free parking is available at Beach Access 4 and 5 (east of Park Road 100), and Boca Chica Beach is a vehicular beach with no BUF charged. Also, Beach Access 3 and Beach Access 6 do not charge a BUF after the close of the summer season until March 1.

Mr. Green has determined that the BUF benefits the public and beachgoers because the increased fees are necessary for the County to continue to fund and provide adequate and improved beach-related services to the public and to considerably update and redevelop all coastal beachfront parks. The BUF specifically benefits the public and beachgoers by funding beach-related services such as trash collection, improving beach access and parking signage, and providing beachgoers with enhanced amenities.

Mr. Green has determined that the public will benefit from the adoption of the Cameron County ERP as part of its Plan because the General Land Office will be able to administer the coastal public land program more efficiently, providing the public more certainty and clarity in the process. The public will also benefit because coastal public land, and therefore, the Permanent School Fund, will be protected with the certification of the amendments to the Cameron County Dune Protection and Beach Access Plan by reducing possibility that structures will become located on state-owned submerged lands, which increases expenditure of public funds for removal of the unauthorized structures.

In addition, the public will benefit from the ERP because of reduced public expenditures associated with damage to or loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life. The 230-foot setback line from the line of vegetation will minimize storm damage to structures by preserving the area seaward of the setback line and minimizing the number of structures in close proximity to the shoreline. Properties with no practicable alternative to construction seaward of the setback line must follow particular construction conditions as specified in the Erosion Response Plan. By encouraging the placement of structures further landward, the additional hazards created by buildings when subjected to storm surge will reduce their vulnerability to storm tide and erosion.

The ERP also includes enhanced dune protections and identifies priority restoration areas. Enhancing dune protections and protecting the foredune ridge will allow natural dune processes to continue with minimal disturbance from development near to shoreline. A healthy dune system serves as a natural buffer against normal storm tides. This natural buffer helps reduce the risk to life and property from storm damage and helps reduce the public expenses of disaster relief. By identifying areas where restoration is needed, the ERP will assist the local government in focusing mitigation and restoration in areas that may be vulnerable to storm inundation and are potential avenues for flood waters that may cause damage to public infrastructure and private properties.

The public will also benefit from construction conditions applied to properties that are exempted from the general prohibition on

building seaward of the setback line. The construction conditions for exempted properties will reduce public expenses due to erosion and storm damage by limiting enclosures under the footprint of the habitable structure, requiring that the structures be elevated an additional two feet above base flood elevation, and ensuring that all elevated structures are consistent with the specifications outlined in *Flood Resistant Design and Construction,* American Society of Civil Engineers/Structural Engineering Institute, ASCE 24-14. These conditions will also require that all designs minimize impacts to natural hydrology and that construction on the exempted properties be located landward of the landward toe of the foredune ridge and as far landward as practicable.

Additionally, properties constructed seaward of the building setback line will be protected by local government implementation of plans to facilitate the improvement of foredune ridges that will protect against storm surge. Scientific and engineering studies considered by the GLO noted that during Hurricane Alicia in 1983, vegetation line retreat and landward extent of storm washover deposits were greater for developed areas than for natural areas (Bureau of Economic Geology Circular 85-5). This difference is attributed in part to the fact that naturally occurring vegetated dunes are stronger than reconstructed dunes due to greater root depths of dune vegetation (Circular 85-5).

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments are proposed under Texas Natural Resources Code §§61.011, 61.015(b), 61.022(b) and 61.022(c), 61.070, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to use and have access to public beaches, imposition or increase of beach user fees, and certification of local government beach access and use plans as consistent with state law. The proposed amendments do not exceed federal or state requirements.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19 of the Texas Constitution.

The GLO has determined that the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. GLO has determined that the proposed rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests.

Cameron County's Erosion Response Plan establishes and implements a building setback line that includes guidelines providing exemptions for property for which the owner has demonstrated that no practicable alternatives to construction seaward of the building setback line exist. In applying its regulation, Cameron County will determine on a case-by-case basis whether to permit construction of habitable structures in the area seaward of the building setback line if certain construction conditions are met and by requiring that such construction be located landward of the landward toe of the foredune ridge and as far landward as practicable, thereby avoiding severe and unavoidable economic impacts and thus an unconstitutional taking. In addition, a building setback line adopted by a local government under that section would not constitute a statutory taking under the Private Real Property Rights Preservation Act inasmuch as Texas Natural Resources Code §33.607(h) provides that Chapter 2007, Government Code, does not apply to a rule or local government order or ordinance authorized by TNRC §33.607.

GOVERNMENT GROWTH IMPACT STATEMENT

The GLO prepared a Government Growth Impact Statement for this proposed rulemaking. Since the proposed rule simply certifies the amendments to Cameron County's Dune Protection and Beach Access Plan (Plan), it will not affect the operations of the General Land Office. The proposed rulemaking does not create or eliminate a government program, will not require an increase or decrease in future legislative appropriations to the agency, will not require the creation of new employee positions nor eliminate current employee positions at the agency, nor will it require an increase or decrease in fees paid to the General Land Office. The proposed rule amendments do not create, limit, or repeal existing agency regulations, but rather certify the amendments to the Plan as consistent with state law. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

During the first five years that the proposed rules would be in effect, it is not anticipated that there will be an adverse impact on the state's economy. The proposed amendments are expected to improve environmental protection and safety and to reduce public expenditures associated with loss of structures and public infrastructure due to storm damage and erosion, disaster response costs, and loss of life.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program as provided for in Texas Natural Resources Code §33.2053 and 31 TAC §505.11(a)(1)(J) and §505.11(c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determinate that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System).

The proposed amendments are consistent with the CMP goals outlined in 31 TAC §501.12(5). These goals seek to balance the benefits of economic development and multiple human uses,

the benefits of protecting, preserving, restoring, and enhancing coastal natural resource areas (CNRAs), and the benefits from public access to and enjoyment of the coastal zone. The proposed amendments are consistent with 31 TAC §501.12(5) as they provide the County with the ability to enhance public access and enjoyment of the coastal zone, protect and preserve and enhance the CNRA, and balance other uses of the coastal zone.

The proposed rules are also consistent with CMP policies in 31 TAC §501.26(a)(4) because they enhance and preserve the ability of the public, individually and collectively, to exercise rights of use of and access to and from public beaches.

The amended rule provides certification that the Erosion Response Plan is consistent with the CMP goals outlined in 31 TAC §§501.12(1), 501.12(2), 501.12(3), and 501.12(6). These goals seek protection of CNRAs, compatible economic development and multiple uses of the coastal zone, minimization of the loss of human life and property due to the impairment and loss of CNRA functions, and coordination of GLO and local government decision making through the establishment of clear, effective policies for the management of CNRAs. The Erosion Response Plan is tailored to the unique natural features, degree of development, storm, and erosion exposure potential for Cameron County. The Erosion Response Plan will reduce impacts to critical dunes and dune vegetation by placement of structures farther landward, reduce dune area habitat and biodiversity loss, and reduce structure encroachment on the beach, which leads to interruption of the natural sediment cycle.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, *Texas Register* Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §§33.602, 33.607, 61.011, 61.015(b), 61.022(b) and 61.022(c), 61.070, and 63.121, which provide the GLO with the authority to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches, imposition or increase of beach user fees, the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property, and certification of local government beach access and use plans as consistent with state law.

Texas Natural Resources Code §§33.602, 33.607, 61.011, 61.015, 61.022, 61.070, and 63.121 are affected by the proposed amendments.

§15.32. Certification Status of Cameron County Dune Protection and Beach Access Plan.

(a) - (d) No Change.

(e) The General Land Office certifies as consistent with state law the Cameron County's Dune Protection and Beach Access Plan, as amended to incorporate Cameron County's Erosion Response Plan and other amendments. The amendments include an increase in the Beach User Fee and the addition of an Erosion Response Plan as an appendix to the Plan. The Erosion Response Plan and amendments were adopted by the Cameron County Commissioners' Court in Order No. 2018O12017 on December 11, 2018.

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

Filed with the Office of the Secretary of State on February 25, 2019.

TRD-201900664
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.37, §5.41

The Comptroller of Public Accounts proposes new §5.37 concerning deferred compensation contracts and amendments to §5.41 concerning payroll requirements.

New §5.37 clarifies that a state agency is prohibited from entering into multiple deferred compensation contracts with the same employee when the contracts are in effect at the same time.

The amendments to §5.41 make non-substantive changes to the definition of "state employee" in subsection (a)(13) to make the definition more readable; clarify, in subsection (n)(2)(B) and (3), that a state agency must conform its payroll calculation with the payroll calculation set forth in comptroller policies and procedures; and change the statutory citation in subsection (o)(1) from "Probate Code, §160" to "Estates Code, §453.004" to update the statutory citation.

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

Mr. Currah also has determined that the proposed amendment and new section would have no fiscal impact on the state government, units of local government, or individuals. The proposed amendment and new section would benefit the public by clearly defining policy, definitions, calculations, and citations. There would be no anticipated significant economic cost to the public. The proposed amendment and new section would have no significant fiscal impact on small businesses or rural communities.

Comments on the proposals may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

New §5.37 is proposed under Government Code, §659.263, which allows the comptroller to adopt rules to administer Government Code, Chapter 659, Subchapter K, concerning promotions, reclassifications, and other adjustments to salary. The amendments to §5.41 are proposed under Government Code, §659.004(b), which authorizes the comptroller, in consultation with the state auditor, to adopt rules that prescribe uniform procedures for payroll and personnel reporting. The comptroller has consulted with the state auditor regarding the amendments to §5.41 as required by Government Code, §659.004(b).

New §5.37 implements Government Code, §659.262, concerning additional compensation for certain classified state employees. The amendments to §5.41 implement Government Code, §659.004, concerning payroll and personnel reporting.

§5.37. Deferred Compensation Contracts.

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

(1) State agency--Has the meaning assigned by Government Code, §659.262(a).

(2) Classified employee--A state employee who is employed in a position that is classified under Government Code, Chapter 654, and is identified by the chief administrator of a state agency as essential for the state agency's operations.

(3) Deferred compensation contract--A contract entered into between a state agency and a classified employee under Government Code, §659.262(c).

(b) A state agency shall not enter into a deferred compensation contract with a classified employee while another deferred compensation contract with that same classified employee is in effect. A deferred compensation contract is in effect during the 12-month period of service required by Government Code, §659.262(c).

§5.41. Payroll Requirements.

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

(1) Appropriation year--The year that the legal authorization for the charge was granted by the legislature. Multiple appropriation year activity may occur within a single fiscal year.

(2) Casual or task employee--An individual who is employed by an institution of higher education for a short time period or a specific task.

(3) Fiscal year--The accounting period for the state government which begins on September 1 and ends on August 31.

(4) FLSA--The Fair Labor Standards Act of 1938.

(5) GAA--The General Appropriations Act.

(6) HRIS--The human resource information system maintained by the Comptroller of Public Accounts. It captures personnel and payroll information submitted by institutions of higher education and locally funded agencies.

(7) Institution of higher education--Has the meaning assigned by Education Code, §61.003, except that the term does not include a public junior college.

(8) Payroll document--The type of document that a state agency submits to the comptroller in the required format when requesting payment of the compensation of state employees or certain other types of payments as required by the comptroller.

(9) Payroll information--Information concerning the type and amount of compensation earned by a state employee, deductions from the compensation earned by the employee, and the source of funding for the payment of compensation to the employee. The term includes other types of information that the comptroller requires to be reported as payroll information.

(10) Personnel information--Information about a state employee's job, compensation, or personal characteristics. The term includes other types of information that the comptroller requires to be reported as personnel information. Personnel information includes all information related to the individual as an employee and must support statewide reporting, such as for veteran's preference and Equal Employment Opportunity type information.

(11) Qualified deferred compensation plan--A deferred compensation plan that is governed by Internal Revenue Code of 1986, §401(k).

(12) State agency--A department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of Texas state government, the jurisdiction of which is not limited to a geographical portion of this state. The term includes the State Bar of Texas, the Board of Law Examiners, and an institution of higher education.

(13) State employee--An officer or employee [~~appointed officer~~] of a state agency. The term includes an elected or appointed officer; a full-time or part-time employee or officer; an hourly employee; a temporary state employee; a casual or task employee; an individual whose employment with a state agency is conditional on the individual being a student; a line item exempt employee; or an employee not covered by the Position Classification Act; an employee that works in a nonacademic position at a state institution of higher education and any other individual to whom wages are paid by a state agency or institution of higher education.

(14) USAS--The uniform statewide accounting system maintained by the Comptroller of Public Accounts. It is the official accounting system for the State of Texas.

(15) USAS format--The USAS layout that a state agency uses to submit payroll documents to the comptroller.

(16) USPS--The uniform statewide payroll/personnel system maintained by the Comptroller of Public Accounts. It is used as the internal personnel and payroll system by user agencies.

(17) Calendar month--The period from the first day through the last day of January, February, March, April, May, June, July, August, September, October, November or December.

(18) Workday--Any day except Saturday and Sunday. The term includes a state or national holiday under GAA or Government Code, §§662.001 - 662.010.

(19) SPRS--The standardized payroll/personnel system maintained by the Comptroller of Public Accounts. It captures personnel and payroll information submitted by state agencies that report their data to SPRS.

(20) CAPPS--The centralized accounting, payroll and personnel system maintained by the Comptroller of Public Accounts or a version held elsewhere as authorized by the Comptroller of Public Accounts. The payroll and personnel components are used by state agencies that use CAPPS as their internal system and it submits personnel and payroll information to SPRS.

(21) Standard work schedule--A schedule with the number of workdays and hours per month as published annually by the Comptroller of Public Accounts. It represents the number of workdays and hours per month that a Monday through Friday, 40 hour per week employee would work.

(22) Non-standard work schedule--A schedule other than a standard work schedule.

(23) Locally funded agencies--State agencies whose funds are held in banks outside of the state treasury department.

(b) Required submission of payroll documents.

(1) A state agency must submit a payroll document to the comptroller if the agency is requesting reimbursement for the agency's payment of compensation to its employees. The payroll document must be in proper USAS format.

(2) A state agency may electronically submit a payroll detail to the comptroller according to the comptroller's requirements.

(c) Deadline for receipt of payroll documents.

(1) Generally. Except as provided in paragraph (2) of this subsection, a payroll document must be received by the comptroller, according to the comptroller's requirements, not later than the seventh workday before payday. This applies regardless of how often a state agency pays its employees.

(2) Exceptions.

(A) If a state agency wants to pick up its warrants before payday under a bailment contract the agency has executed with the comptroller, then the agency's payroll document must be received not later than the seventh workday before the day on which the agency wants to pick up the warrants.

(B) A payroll document that is submitted by a state agency that uses USPS or uses CAPPS or reports to SPRS must be received by the comptroller, according to the comptroller's requirements, not later than the fourth workday before payday to ensure direct deposit of net pay.

(d) Supplemental payroll documents.

(1) When allowed. A state agency may submit a supplemental payroll document to the comptroller if a change occurs between the agency's submission of its regular payroll document and the end of the month.

(2) Adjustments in compensation. When a change results in a state agency owing money to a state employee, the agency should adjust the employee's compensation for the following month instead of submitting a supplemental payroll if the delay would not cause hardship to the employee.

(e) Non-regular payments. A state agency may make a payment to a state employee for other than the employee's regular compensation on a regular payroll document. The agency must select the proper comptroller object code for the payment.

(f) Cancellations of payments of compensation.

(1) Cancellations of warrants. When a state agency needs to cancel a payroll warrant, the agency must follow the comptroller's warrant cancellation procedures.

(2) Cancellation of electronic funds transfers. When a state agency needs to cancel a payment of compensation via the comptroller's electronic funds transfer system, the agency must follow the procedures specified by the comptroller.

(3) Issuance of new warrants. When a state agency needs to issue a new payroll warrant after canceling the original payroll warrant, the agency must follow the comptroller's procedures for supplemental payrolls.

(g) Payroll conversions. In early September of each year, state agencies that are subject to the Position Classification Act must furnish payroll conversion information to the comptroller and the state auditor according to their guidelines. Although the comptroller sends the guidelines to each state agency once each year, the guidelines are always available from the comptroller upon request.

(h) Reporting of personnel information to HRIS.

(1) Applicability. This subsection applies to a state agency only if it does not use USPS, CAPPS or report to SPRS.

(2) Reporting requirements.

(A) A state agency shall report personnel information to HRIS if:

(i) a state employee is added to or removed from the agency's payroll;

(ii) the agency changes a state employee's compensation rate;

(iii) the agency changes a state employee's classification or job title;

(iv) the legal name of a state employee of the agency changes;

(v) the social security number of a state employee of the agency changes;

(vi) a state employee of the agency goes on leave without pay or faculty development leave;

(vii) the home address of a state employee of the agency changes;

(viii) deduction information concerning a state employee of the agency changes, if HRIS requires reporting of that information; or

(ix) other job or descriptive information concerning a state employee of the agency changes, if HRIS requires reporting of that information.

(B) A state agency shall ensure that HRIS receives its report not later than the seventh day of the month after the month in which the change or event occurs that triggers the requirement for the agency to file the report.

(C) A report to HRIS under this paragraph must be made in the manner, frequency, and form required by the comptroller.

(i) Reporting of payroll information to HRIS.

(1) Applicability. This subsection applies to:

(A) an institution of higher education that does not use USPS, CAPPS or report to SPRS;

(B) the State Bar of Texas; and

(C) the Board of Law Examiners.

(2) Reporting requirements.

(A) A state agency shall report payroll information to HRIS.

(B) A state agency's report of payroll information must be complete not later than the seventh day of the month following the month covered by the report. A report is complete only if:

(i) it encompasses all the pay periods that end in the month covered by the report; and

(ii) HRIS receives it by the deadline.

(C) A report to HRIS under this paragraph must be made in the manner, frequency, and form required by the comptroller.

(j) Reporting errors. If the comptroller detects an error in a state agency's report of personnel or payroll information, then the comptroller shall provide a description of the error to the agency. The agency shall then correct the error according to the comptroller's requirements. The agency must correct the error not later than the seventh day of the month following the month in which the agency receives a description of the error.

(k) Additional mail codes. A state agency may establish an additional mail code for a state employee only by submitting the proper application to the comptroller's Fiscal Management division.

(l) Reporting of personnel information to USPS, CAPPS or SPRS.

(1) Applicability. This subsection applies to a state agency only if it does not report to HRIS.

(2) Reporting requirements.

(A) A state agency shall be considered to have reported personnel information to USPS, CAPPS or SPRS if:

(i) a state employee is added to or removed from the agency's payroll;

(ii) the agency changes a state employee's compensation rate;

(iii) the agency changes a state employee's classification or job title;

(iv) the legal name of a state employee of the agency changes;

(v) the social security number of a state employee of the agency changes;

(vi) a state employee of the agency goes on leave without pay or faculty development leave;

(vii) the home address of a state employee of the agency changes;

(viii) deduction information concerning a state employee of the agency changes; or

(ix) other job or descriptive information concerning a state employee of the agency changes.

(B) A state agency must ensure that the information is provided in the manner, frequency, and form required by the comptroller.

(m) Reporting of payroll information to USPS, CAPPS or SPRS.

(1) Applicability. This subsection applies to a state agency that does not report to HRIS.

(2) Reporting requirements.

(A) A state agency shall be considered to have reported payroll information to USPS, CAPPS or SPRS if the agency successfully completes the processing of payroll information.

(B) A state agency's report of payroll information must include any payments of regular salary, twice monthly salary, overtime pay, longevity, benefit replacement pay, lump sum payment of unused vacation and sick leave, emoluments and special pays such as bilingual or fire brigade pay. A report is complete only if:

(i) it encompasses all the pay periods that end in the month covered by the report; and

(ii) the comptroller receives it by the deadline.

(C) Payroll information under this paragraph must be processed in the manner, frequency, and form required by the comptroller.

(D) Reporting errors. If the comptroller detects an error in a state agency's report of personnel or payroll information, then the comptroller shall provide a description of the error to the agency. The agency shall then correct the error according to the comptroller's requirements.

(n) Standard payroll calculation.

(1) Exemption. This subsection does not apply to an institution of higher education.

(2) Required use of USPS.

(A) Except as provided in subparagraph (B) of this paragraph, a state agency must use USPS to:

(i) calculate and otherwise generate the agency's payments of compensation to its state employees; and

(ii) maintain the agency's personnel and payroll information.

(B) A state agency is not subject to subparagraph (A) of this paragraph if the comptroller has allowed the agency to report to SPRS or to use the payroll and personnel components of CAPPS. [~~If a state agency is allowed to report to SPRS or to use CAPPS, it must conform to the payroll calculation defined in USPS.~~]

(3) Conforming to payroll calculation. A state agency must conform its payroll calculation with the payroll calculation set forth in comptroller policies and procedures.

(o) Deceased state employees.

(1) Required payees. A state agency must pay the compensation earned by a deceased state employee to the employee's estate unless Estates Code, §453.004 [~~Probate Code, §160~~] , or another law authorizes or requires a different payment method.

(2) Additional mail codes. When a state agency pays the estate of a deceased state employee, the agency must establish an additional mail code under the payee identification number of the employee.

(p) Overtime payments.

(1) Generally. A state employee covered by the overtime provisions of the FLSA must be credited or paid for overtime hours worked according to the GAA, the FLSA, and the regulations adopted

by the United States Department of Labor under the FLSA. Those regulations and the FLSA prevail over the GAA to the extent of conflict, if any.

(2) Method for making overtime payments. A state agency may pay overtime on any payroll document submitted to the comptroller, including a supplemental payroll document.

(q) Payments of compensation for working partial months.

(1) State employees paid once each month.

(A) This paragraph applies only to a state employee who is paid once each month.

(B) A state agency must calculate the amount of compensation a state employee is entitled to receive for working less than a full month by:

(i) calculating the employee's hourly rate of pay according to the comptroller's requirements; and

(ii) multiplying the employee's hourly rate of pay by the number of hours worked to determine the correct amount of compensation.

(C) Subparagraph (B) of this paragraph also applies to the compensation paid to a state employee who is on leave without pay for less than an entire calendar month.

(2) State employees paid twice each month.

(A) This paragraph applies only to a state employee who is paid twice each month.

(B) This subparagraph applies to a state employee who does not work all the available hours in the first half of a month but works all the available hours in the second half of the month.

(i) The total compensation that must be paid to a state employee for an entire month is equal to the product of:

(I) the hours worked in the month by the employee; and

(II) the employee's hourly rate for the month calculated according to the comptroller's requirements.

(ii) The amount of compensation that must be paid to a state employee for services provided during the first half of a month is equal to the product of:

(I) the hours worked in that half of the month by the employee; and

(II) the employee's hourly rate for the month calculated according to the comptroller's requirements.

(iii) The amount of compensation that must be paid to a state employee for services provided during the second half of a month equals the difference between:

(I) the total compensation that must be paid to the employee for the entire month as determined under clause (i) of this subparagraph; and

(II) the compensation that must be paid to the employee for services provided during the first half of the month as determined under clause (ii) of this subparagraph.

(C) This subparagraph applies to a state employee who works all the available hours in the first half of a month but does not work all the available hours in the second half of that month.

(i) The total compensation that must be paid to a state employee for an entire month is equal to the product of:

(I) the hours worked in the month by the employee; and

(II) the employee's hourly rate for the month calculated according to the comptroller's requirements.

(ii) The amount of compensation that must be paid to a state employee for services provided during the first half of a month equals 50% of the employee's compensation for the month.

(iii) The amount of compensation that must be paid to a state employee for services provided during the second half of a month equals the difference between:

(I) the total compensation that must be paid to the employee for the entire month as determined under clause (i) of this subparagraph; and

(II) the compensation that must be paid to the employee for services provided during the first half of the month as determined under clause (ii) of this subparagraph.

(r) Payroll deductions.

(1) Special definitions. The following words and terms, when used in this subsection, shall have the following meanings unless the context clearly indicates otherwise.

(A) Certified state employee organization--A state employee organization that the comptroller has certified according to §5.46 of this title (relating to Deductions for Paying Membership Fees to Employee Organizations).

(B) State agency--

(i) a board, commission, department, office, or other agency that is in the executive branch of state government and that was created by the constitution or a statute of the state, including an institution of higher education as defined by Education Code, §61.003;

(ii) the legislature or a legislative agency; or

(iii) the supreme court, the court of criminal appeals, a court of appeals, the State Bar of Texas, or another state judicial agency.

(2) Statutory limitation. Government Code, §659.002, prohibits a state agency from making a deduction from the compensation paid to an employee whose compensation is paid in full or in part from state funds unless the deduction is authorized by law.

(3) List of authorized deductions. The deductions authorized by law are:

(A) court-ordered deductions under Bankruptcy Code, Chapter 13;

(B) deductions required by levies imposed by the Internal Revenue Service;

(C) deductions required by payroll deduction agreements between the Internal Revenue Service and state employees if the agreements are legally binding on employing state agencies;

(D) federal income tax withholding;

(E) deductions required by the Federal Insurance Contributions Act, which includes social security and Medicare withholding;

(F) income tax deductions required by states other than Texas or by local governments outside Texas in which state employees live and work;

(G) contributions to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the optional retirement program, the Judicial Retirement System of Texas Plan One, or the Judicial Retirement System of Texas Plan Two;

(H) fees charged to state employees by their employing state agencies for complying with court-ordered child support deductions from the employees' compensation;

(I) court-ordered child support deductions;

(J) extra federal income tax withholding;

(K) deferrals to and repayments of loans from the qualified deferred compensation plan;

(L) deductions required by a valid assignment, transfer, or pledge of compensation as security for an indebtedness under Education Code, §51.934;

(M) health benefits plan deductions, cafeteria plan deductions, and other deductions authorized by Insurance Code, Chapter 1551, Texas Employees Group Insurance Benefits Act;

(N) health benefits plan deductions, cafeteria plan deductions, and other deductions authorized by Insurance Code, Chapter 1551, Texas State College and University Employees Uniform Insurance Benefits Act;

(O) deductions for goods and services provided to employees by the institutional division of the Department of Criminal Justice;

(P) deductions for services provided to state employees of agencies as authorized in statute or the GAA;

(Q) deferrals to the deferred compensation plans governed by Internal Revenue Code of 1986, §457;

(R) contributions by employees of the Texas Higher Education Coordinating Board, the Texas Education Agency, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, the Texas Juvenile Justice Department, and the governing boards of state-supported institutions of higher education to any investment authorized under Internal Revenue Code of 1986, §403(b);

(S) deductions to pay membership fees to certified state employee organizations;

(T) service purchase installment deductions for contributing members of the Employees Retirement System of Texas, the Judicial Retirement System of Texas Plan I, or the Judicial Retirement System of Texas Plan II;

(U) deductions from the compensation paid to certain faculty members who take English proficiency courses under Education Code, §51.917;

(V) deductions for contributions to eligible charitable organizations;

(W) deductions for payments to credit unions;

(X) deductions required by federal law for the repayment of guaranteed student loans;

(Y) deductions for savings bond purchases;

(Z) deductions for supplemental optional benefit programs approved by the Employees Retirement System of Texas under Government Code, §659.102;

(AA) deductions to make payments under a prepaid tuition contract; and

(BB) deductions for contributions to a qualified football coaches plan.

(s) Garnishments.

(1) Delivery of garnishment notices. A notice to garnish the compensation of a state employee must be delivered directly to the employing state agency.

(2) Garnishment notices for terminated employees. If a state agency receives a garnishment notice for a person no longer employed by the agency, then the agency must:

(A) return the notice to the entity that issued the notice;

(B) inform the entity that the person is no longer employed; and

(C) identify to the entity the retirement system that the entity should contact to seek information about the person's retirement contribution balance.

(3) Compliance with garnishment notices. Upon receipt of a valid garnishment notice, the receiving state agency must:

(A) inform the affected state employee about the notice and the procedures the agency will follow to comply with the notice;

(B) establish a mail code on the comptroller's Texas payee information system for the recipient of the garnishment proceeds unless a payee number has already been designated for all state agencies to use; and

(C) show the garnishment as a miscellaneous deduction on the affected state employee's payroll record.

(4) Effective date of garnishment notices. A garnishment notice takes effect with the first payroll document submitted to the comptroller after the notice is received. Therefore, if a state agency receives a garnishment notice after the agency has submitted a payroll document to the comptroller, the notice does not apply to that document.

(t) Refunds of deductions. A state agency may refund amounts previously deducted in error only by using credit amounts in the appropriate deduction column on a payroll document.

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 25, 2019.

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Victoria North
Chief Counsel, Fiscal and Agency Affairs Legal Services Division
Comptroller of Public Accounts
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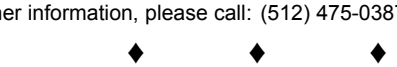
For further information, please call: (512) 475-0387



CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER I. VALUATION PROCEDURES

34 TAC §9.4001

The Comptroller of Public Accounts proposes amendments to §9.4001, concerning valuation of open-space and agricultural lands. These amendments are to reflect updates and revisions to the manual for the appraisal of agricultural land.

The amendments update and revise the January 2017 manual for the appraisal of agricultural land. The manual sets forth the methods to apply and the procedures to use in qualifying and appraising land used for agricultural and open-space land under Tax Code, Chapter 23, Subchapters C and D. The proposed updated version, dated November 2018, is available for review at https://comptroller.texas.gov/taxes/property-tax/ag-manual.php.

Generally, the substantive changes to the manual reflect statutory changes. The introduction includes an updated description of the adoption process for the manual to reflect changes in Senate Bill 526 and Senate Bill 594, 85th Legislature, 2017. The comptroller also proposes to remove references to a prohibition on homestead properties designated for agricultural use being used to secure home equity loans, as was amended in Texas Constitution, Article XVI, §50(a)(6). The proposed manual includes a new section titled "Cessation of Agricultural Use" to address specific circumstances for which special appraisal does not end when the land ceases to be devoted principally to agricultural use to the degree of intensity generally accepted in the area, based on changes made in House Bill 777, House Bill 3198, and Senate Bill 1459, 85th Legislature.

The proposed update includes a new section on the 2018 Federal Farm Bill. While the bill has not yet become law, cotton is likely to be eligible again for some government programs after the bill passes. The comptroller added this section to advise chief appraisers to keep up with any possible changes to the federal farm programs.

The comptroller also proposes a new question in Appendix A to provide example of property with an inaccessible area that may be classified as wasteland as determined by the chief appraiser.

Additionally, the comptroller proposes changes to improve the format, clarity and grammar of the manual. An overview of all proposed changes is available for review at https://comptroller.texas.gov/taxes/property-tax/docs/ag-manual-overview.pdf.

Pursuant to Tax Code, §23.52(d), these rules have been approved by the comptroller with the review and counsel of the Department of Agriculture.

Tom Currah, Chief Revenue Estimator, has determined that the proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amendment would benefit the public by improving the administration of local property valuation and taxation. There would be no anticipated significant economic cost to the public. The proposed amendment would have no significant fiscal impact on small businesses or rural communities.

Mr. Currah, has also determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

You may submit comments on the proposal to Korry Castillo, Director, Property Tax Assistance Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: ptad.rulecomments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

These amendments are proposed under Tax Code, §23.41 (Appraisal); and §23.52 (Appraisal of Qualified Agricultural Land), which provide the comptroller with the authority to prepare and issue publications relating to the appraisal of property and to specify the methods to apply and the procedures to use in appraising qualified agricultural and open-space land for ad valorem tax purposes.

These amendments implement Tax Code, §23.41 (Appraisal) and §23.52 (Appraisal of Qualified Agricultural Land).

§9.4001. Valuation of Open-Space and Agricultural Lands.
Adoption of the "Manual for the Appraisal of Agricultural Land." This manual specifies the methods to apply and the procedures to use in qualifying and appraising land used for agriculture and open-space land under Tax Code, Chapter 23, Subchapters C and D. Appraisal districts are required to use this manual in qualifying and appraising open-space land. The Comptroller of Public Accounts adopts by reference the Manual for the Appraisal of Agricultural Land dated November 2018 [~~January 2017~~]. The manual is accessible on the Property Tax Assistance Division website. Copies of the manual can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies also may be requested by calling our toll-free number 1-800-252-9121. In Austin, call (512) 305-9999.

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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Victoria North
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PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

34 TAC §25.11

The Teacher Retirement System of Texas (TRS) proposes new rule §25.11 (Employees of Foreign TRS Subsidiaries), to Chap-

ter 25 , Subchapter A, in Title 34, Part 3, of the Texas Administrative Code.

BACKGROUND AND PURPOSE

TRS proposes new rule §25.11, concerning membership eligibility of employees of TRS subsidiaries with a base of operations located in jurisdictions outside the United States. The proposed new rule will be located in Subchapter A, which describes the criteria for employment eligibility for participation in TRS.

Rule §25.11 is intended to clarify the membership status of an employee of a TRS subsidiary that has its principal office located outside the jurisdiction of the United States. Currently, the Teacher Retirement Investment Company of Texas (TRICOT), a subsidiary of TRS which operates in London, has no employees. The new rule clarifies that anyone hired directly by TRICOT as an employee will not be eligible to participate in TRS.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed new rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed new rule.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed new rule will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the proposed new rule will be to provide notice and guidance on TRS membership eligibility. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed new rule.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed new rule. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed new rule. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed new rule will be in effect the proposed new rule will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not require an increase or decrease in fees paid to TRS; will not create a new regulation; will not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that since there are no private real property interests affected by the proposed new rule, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed new rule because the proposed new rule does not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

STATUTORY AUTHORITY

The new rule is proposed under the authority of Government Code §825.102, which authorizes the TRS Board of Trustees to adopt rules for the eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the board.

CROSS-REFERENCE TO STATUTE

The proposed new rule §25.11 implements Chapter 822, Subchapter A, Texas Government Code, concerning TRS membership and Chapter 823, Subchapter A, Texas Government Code, concerning creditable service for TRS purposes.

§25.11. Employees of Foreign TRS Subsidiaries.

A person is not eligible for membership, service credit, or compensation credit based on employment by a subsidiary of the Teacher Retirement System of Texas (TRS) that has its principal office located in a jurisdiction other than the United States.

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 25, 2019.

TRD-201900643
Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 542-6438

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CHAPTER 51. GENERAL ADMINISTRATION

34 TAC §§51.1, 51.2, 51.11

The Teacher Retirement System of Texas (TRS) proposes amendments to §§51.1, 51.2, and 51.11 of Chapter 51 in Title 34, Part 3, of the Texas Administrative Code.

BACKGROUND AND PURPOSE

TRS proposes amendments to §51.1, concerning advisory and auxiliary committees, §51.2, concerning vendor protests, dispute resolution, and hearing, and §51.11, concerning historically underutilized businesses.

The proposed amendment to §51.1 updates the expiration date for TRS advisory and auxiliary committees. Under the rule, the expiration date for the committees is tied to the next sunset review of TRS. The proposed amendment simply updates the stated sunset review date to 2025 pursuant to Tex. Gov't Code §825.006.

The proposed amendments to §51.2 update two out-of-date references to other Texas Administrative Code provisions. This is not a substantive change to the rule, but rather just corrects the citation of the cross-referenced provisions.

Similarly, the proposed amendment to §51.11 updates one out-of-date reference to another Administrative Code provision. This is not a substantive change to the rule, but rather just corrects the citation of the cross-referenced provision.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed amended rules will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of administering the proposed amended rules.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed amended rules will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the proposed amended rules will be to update provisions relating to the general administration of the retirement system. Mr. Green has also determined that there is no economic cost to entities or persons required to comply with the proposed amended rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amended rules. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed amended rules. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed amended rules will be in effect the proposed amended rules will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not require an increase or decrease in fees paid to TRS; will not create a new regulation; will not expand, limit, or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

TAKINGS IMPACT ASSESSMENT

TRS has determined that since there are no private real property interests affected by the proposed amended rules, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2001.0045 does not apply to the proposed amended rules because the proposed amended rules do not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

STATUTORY AUTHORITY

The amended rules are proposed under the authority of Government Code §825.102, which authorizes TRS to adopt rules for the eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the board; Government Code §2110.008, which authorizes state agencies to establish the duration of advisory committees by rule; and Insurance Code §1575.407, which authorizes TRS to adopt rules for the administration of the Retirees Advisory Committee.

CROSS-REFERENCE TO STATUTE

The proposed amendment to §51.1 implements §825.114 of the Government Code, which authorizes the Board to establish advisory committees as it considers necessary. The proposed amendments to §51.2 implement the requirements as set forth by the state agencies referenced in the rule amendments. The proposed amendment to §51.11 implements §825.514 of the Government Code, which states that the system is subject to provisions relating to historically underutilized businesses, including Chapter 2161 of the Government Code.

§51.1. Advisory and Auxiliary Committees.

(a) The following committees are created for a period which will expire at the end of the next sunset review for the Teacher Retirement System of Texas (TRS) which is September 1, 2025 [~~September 1, 2019~~], unless continued by the outcome of the sunset process, to advise or otherwise serve the retirement system and are deemed necessary to assist the Board of Trustees in performing its duties:

(1) a Medical Board, composed of three licensed physicians as provided by §825.204, Government Code; and

(2) a Retirees Advisory Committee for the health benefits program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care), composed as provided by Subchapter I of Chapter 1575, Insurance Code.

(b) The duties of a committee under this section are established by applicable statute or policies of the Board of Trustees.

(c) The members of the Medical Board shall be paid, as independent contractors, fees and expenses in accordance with contracts negotiated by the executive director or his designee subject to the applicable resolutions, policies, and annual budget adopted by the Board of Trustees. To the extent advisory committees are composed of independent contractors they are to be considered consultants employed by the retirement system under the authority recognized by §2254.024, Government Code.

(d) Members of the Retirees Advisory Committee for TRS-Care do not serve as independent contractors and are entitled only to reimbursement for actual and reasonable expenses incurred in performing functions as members of the committee.

§51.2. Vendor Protests, Dispute Resolution, and Hearing.

(a) The purpose of this section is to provide a procedure for vendors to protest purchases made by the Teacher Retirement System of Texas (TRS). Protests of purchases made by the Texas Facilities Commission (facilities commission) on behalf of TRS are addressed in 1 Texas Administrative Code Chapter 111, Subchapter C (relating

to Complaints and Dispute Resolution). Protests of purchases made by the Department of Information Resources (DIR) on behalf of TRS are addressed in 1 Texas Administrative Code Chapter 201, §201.1 [~~§201.2~~] (relating to Procedures for [~~Complaints,~~] Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures). Protests of purchases made by Texas Procurement and Support Services of the Comptroller of Public Accounts (comptroller's office) on behalf of TRS are addressed in 34 Texas Administrative Code Chapter 20, Subchapter F, Division 3 [~~§20.384~~] (relating to Protests and Appeals). The rules of the facilities commission, DIR, and the comptroller's office are in the Texas Administrative Code, which is on the Internet website of the Office of the Secretary of State, Texas Register Division at: www.sos.state.tx.us/tac/index.shtml.

(b) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to TRS. Such protests must be in writing and received in the office of the chief officer in whose area the action is (was) being processed within ten working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements set forth in subsection (c) of this section. Copies of the protest must be mailed or delivered by the protesting party to all vendors who have submitted bids or proposals for the contract involved.

(c) A formal protest must be sworn and contain:

(1) a specific identification of the statutory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.

(d) The chief officer shall have the authority, prior to appeal to the executive director or his designee, to settle and resolve the dispute concerning the solicitation or award of a contract. The chief officer may solicit written responses to the protest from other interested parties.

(e) If the protest is not resolved by mutual agreement, the chief officer will issue a written determination on the protest.

(1) If the chief officer determines that no violation of rules or statutes has occurred, he or she shall so inform the protesting party and interested parties by letter which sets forth the reasons for the determination.

(2) If the chief officer determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action.

(3) If the chief officer determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action. Such remedial action may include, but is not limited to, declaring the purchase void; reversing the award; and re-advertising the purchase using revised specifications.

(f) The chief officer's determination on a protest may be appealed by an interested party to the executive director or his designee. An appeal of the chief officer's determination must be in writing and must be received in the office of the executive director or his designee no later than ten working days after the date of the chief officer's determination. The appeal shall be limited to review of the chief officer's determination. Copies of the appeal must be mailed or delivered by the appealing party to other interested parties and must contain an affidavit that such copies have been provided.

(g) The general counsel shall review the protest, chief officer's determination, and the appeal and prepare a written opinion with recommendation to the executive director or his designee. The executive director or his designee may, in his or her discretion, refer the matter to the Board of Trustees at a regularly scheduled open meeting or issue a final written determination.

(h) When a protest has been appealed to the executive director or his designee under subsection (f) of this section and has been referred to the Board of Trustees by the executive director or his designee under subsection (g) of this section, the following requirements shall apply:

(1) Copies of the appeal, responses of interested parties, if any, and general counsel recommendation shall be mailed to the Board members and interested parties. Copies of the general counsel's recommendation and responses of interested parties shall be mailed to the appealing party.

(2) All interested parties who wish to make an oral presentation at the open meeting are requested to notify the office of the executive director or his designee at least 48 hours in advance of the open meeting.

(3) The Board of Trustees may consider oral presentations and written documents presented by staff, the appealing party, and interested parties. The chairman shall set the order and amount of time allowed for presentations.

(4) The Board of Trustees' determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting and shall be final.

(i) Unless good cause for delay is shown or the executive director or his designee determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(j) In the event of a timely protest or appeal under this section, a protestor or appellant may request in writing that TRS not proceed further with the solicitation or with the award of the contract. In support of the request, the protestor or appellant is required to show why a stay is necessary and that harm to TRS will not result from the stay. If the executive director determines that it is in the interests of TRS not to proceed with the contract, the executive director may make such a determination in writing and partially or fully suspend contract activity.

(k) A decision issued either by the Board of Trustees in open meeting, or in writing by the executive director or his designee, shall be the final administrative action of TRS.

§51.11. Historically Underutilized Businesses.

For the purpose of making purchases with funds appropriated to it, the Teacher Retirement System of Texas (TRS) adopts by reference the rules of the Comptroller of Public Accounts (comptroller's office) in 34 Texas Administrative Code Chapter 20, Subchapter D, Division 1 [~~Subchapter B~~] (relating to the Historically Underutilized Business Program). The rules of the comptroller's office are in the Texas Administrative Code, which is on the Internet website of the Office of the Sec-

retary of State, Texas Register Division at: www.sos.state.tx.us/tac/index.shtml.

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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Don Green
Chief Financial Officer
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 369. DISPLAY OF LICENSES

40 TAC §369.2

The Texas Board of Occupational Therapy Examiners proposes amendments to §369.2, concerning changes of name or address. The amendments are proposed to remove the requirement that an occupational therapy assistant with a regular license notify the Board of supervisor changes and to add language regarding the address of record to the section.

In the proposed amendments, a provision concerning the requirement that a licensee or applicant notify the Board of changes of supervisor has been revised. In the current rule, licensees and applicants are required to notify the Board of changes of supervisor within 30 days. In the proposed amendments, this has been revised to require instead that only applicants and temporary licensees notify the Board of changes of supervisor.

The repeal of §373.3, concerning supervision of an occupational therapy assistant, has also been proposed and submitted to the *Texas Register* for publication. The repeal of such would remove the requirement that an occupational therapy assistant with a regular license submit supervisor information on the Occupational Therapy Assistant Supervision form.

The proposed amendments also include the addition of a provision concerning the address of record of a licensee or applicant; the address of record is the physical address that will be provided to the public. Information concerning the address of record currently appears in other sections of the OT Rules. The provision is being added to §369.2 as the section concerns changes to a licensee's or applicant's address information.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rule as the changes do not impose a cost.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rule would not impact a local economy as the proposed rule concerns the cleanup, clarification, and reduction of occupational therapy regulations and does not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of enforcing the rule would be the cleanup and clarification of occupational therapy regulations and the reduction of reporting regulations for occupational therapy assistants with a regular license. There would be no anticipated economic cost to persons required to comply with the proposed rule.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed rule concerns the cleanup, clarification, and reduction of occupational therapy regulations and does not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT

The proposed rule would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments' impact on government growth during the first five years the rule would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the 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 an existing regulation; would repeal the existing regulation that occupational therapy assistants with a regular license report changes in supervisor information; would not increase the number of individuals subject to the rule's applicability; would decrease the number of individuals subject to the rule's applicability as occupational therapy assistants with a regular license would not be required to submit supervisor information; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed rule because as the rule does not impose a cost, it does not increase costs to regulated persons.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no

later than 30 days from the date that the proposed amendments are published in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§369.2. Changes of Name or Address.

(a) A licensee or applicant shall notify the Board in writing of changes in name, residential address, business address, mailing address, and/or email address[~~, and/or supervisor~~] within 30 days of such change(s). Applicants and temporary licensees, in addition, shall notify the Board in writing of changes of supervisor within 30 days of such change(s). A copy of the legal document (such as a marriage license, court decree, or divorce decree) evidencing a change in name must be submitted by the licensee or applicant with any written notification of a change in name. To request a replacement copy of the license to reflect a name change, refer to §369.1 of this title (relating to Display of Licenses).

(b) The address of record is the physical address that will be provided to the public. Until applicants and licensees select an address of record, the work address will be used as the default. If no work address is available, the mailing address will be used. If no alternate address is available, the home address will be used. Applicants and licensees may update this information at any time.

(c) [~~(b)~~] Failure to provide the changes requested in subsection (a) of this section may cause a licensee to be subject to disciplinary action.

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

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John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 305-6900

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CHAPTER 372. PROVISION OF SERVICES

40 TAC §372.1, §372.2

The Texas Board of Occupational Therapy Examiners proposes amendments to §372.1, concerning Provision of Services, and §372.2, concerning General Purpose Occupation-Based Instruction. The amendments are proposed to clean up and clarify the sections and to add clarifying language to §372.1 regarding the transmission of a medical referral.

Cleanups and clarifications to §372.1 include changes to provisions regarding an occupational therapist's delegation of the collection of data for an evaluation and the delegation of tasks. In the proposed amendments to such provisions, references to a temporary licensee have been removed as the references to an occupational therapy assistant therein already refer to both an occupational therapy assistant with a regular or temporary license.

The amendments also include language clarifying that when a referral is required for the provision of occupational therapy services, such may be transmitted by an occupational therapy plan of care, developed according to the requirements of the section, that is signed by the licensed referral source.

The amendments also include a clarification of a requirement regarding the inclusion of an occupational therapist's name in the intervention note.

The amendments include further cleanups and clarifications.

The proposed amendments also include a change to §372.2 to strike a reference to the supervision requirements in §373.3 because the repeal of §373.3, concerning supervision of an occupational therapy assistant, has also been proposed and submitted to the *Texas Register* for publication.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rules as the changes do not impose a cost.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the rules would not impact a local economy as the proposed rules concern the cleanup, clarification, and reduction of occupational therapy regulations and do not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has also determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of enforcing the rules would be the cleanup and clarification of occupational therapy regulations. There would be no anticipated economic cost to persons required to comply with the proposed rules.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed rules concern the cleanup, clarification, and reduction of occupational therapy regulations and do not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT

The proposed rules would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments' impact on government growth during the first five years the rules would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the 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 or limit an existing regulation; would repeal the existing regulation that supervision requirements for services provided pursuant to §372.2 shall be completed in accordance with §373.3, concerning supervision of an occupational therapy assistant; would not increase or decrease the number of individuals subject to the rule's applicability; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed rules because as the rules do not impose a cost, they do not increase costs to regulated persons.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register.*

STATUTORY AUTHORITY

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§372.1. Provision of Services.

(a) Medical Conditions.

(1) Occupational therapists may evaluate the client to determine the need for occupational therapy services without a referral. However, a referral must be requested at any time during the evaluation process when necessary to ensure the safety and welfare of the client.

(2) Intervention for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.

(b) Non-Medical Conditions. The evaluation or intervention for a non-medical condition does not require a referral. However, a referral must be requested at any time during the evaluation or intervention process when necessary to ensure the safety and welfare of the client.

(c) Methods of Referral/Plan of Care documentation. The referral or signed plan of care must be from a licensed referral source in accordance with the Practice Act, §454.213 (relating to Accepted Practice; Practitioner's Referral), and may be transmitted in the following ways:

(1) by [~~in~~] a written document, including paper or electronic information/communications technologies; [~~faxed and emailed documents; or~~]

(2) verbally, either in person or by electronic information/communications technologies. If a referral is transmitted verbally, it must be documented by the authorized personnel who receives the referral. In this section, "authorized personnel" means staff members authorized by the employer or occupational therapist to receive referrals transmitted verbally; or[.]

(3) by an occupational therapy plan of care, developed according to the requirements of this section, that is signed by the licensed referral source.

(d) Screening, Consultation, and Monitored Services. A screening, consultation, or monitored services may be performed by an occupational therapy practitioner without a referral.

(e) Evaluation.

(1) Only an occupational therapist may perform an initial evaluation or any re-evaluations.

(2) An occupational therapy plan of care must be based on an occupational therapy evaluation.

(3) The occupational therapist is responsible for determining whether any aspect of the evaluation may be conducted via telehealth or must be conducted in person.

(4) The occupational therapist must have contact with the client during the evaluation via telehealth using synchronous audiovisual technology or in person. Other telecommunications or information technology may be used to aid in the evaluation but may not be the primary means of contact or communication.

(5) The occupational therapist may delegate to an occupational therapy assistant [~~or temporary licensee~~] the collection of data for the evaluation. The occupational therapist is responsible for the accuracy of the data collected by the occupational therapy assistant.

(f) Plan of Care.

(1) Only an occupational therapist may initiate, develop, modify or complete an occupational therapy plan of care. It is a violation of the OT Practice Act for anyone other than the occupational therapist to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the client should be discharged, or any other aspect of the provision of occupational therapy as set out in the OT Act and Rules.

(2) Modifications to the plan of care must be documented.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners may implement the written plan of care once it is completed by the occupational therapist.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) Except where otherwise restricted by rule, the occupational therapy practitioner is responsible for determining whether any aspect of the intervention session may be conducted via telehealth or must be conducted in person.

(8) The occupational therapy practitioners must have contact with the client during the intervention session via telehealth using synchronous audiovisual technology or in person. Other telecommunications or information technology may be used to aid in the intervention

session but may not be the primary means of contact or communication.

(9) Devices that are in sustained skin contact with the client (including but not limited to wheelchair positioning devices, splints, hot/cold packs, or therapeutic tape) require the on-site and attending presence of the occupational therapy practitioner for any initial applications. The occupational therapy practitioner is responsible for determining the need to be on-site and attending for subsequent applications or modifications.

(10) Except where otherwise restricted by rule, the supervising occupational therapist may only delegate to an occupational therapy assistant [~~or temporary licensee~~] tasks that they both agree are within the competency level of that occupational therapy assistant [~~or temporary licensee~~].

(g) Documentation.

(1) The client's records include the medical referral, if required, and the plan of care. The plan of care includes the initial evaluation; the goals and any updates or change of the goals; the documentation of each intervention session by the OT or OTA providing the service; progress notes and any re-evaluations, if required; any patient related documents; and the discharge or discontinuation of occupational therapy services documentation.

(2) The licensee providing occupational therapy services must document for each intervention session. The documentation must accurately reflect the intervention, decline of intervention, and/or modalities provided.

(3) In each intervention note, the occupational therapy assistant must include the name of an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. The occupational therapist in the intervention note may be different from the occupational therapist who wrote the plan of care. The occupational therapy assistant may not provide services unless this requirement is met. [~~The occupational therapy assistant must include the name of a supervising OT in each intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. If this requirement is not met, the occupational therapy assistant may not provide services.~~]

(h) Discharge or Discontinuation of Occupational Therapy Services.

(1) Only an occupational therapist has the authority to discharge clients from occupational therapy services. The discharge or discontinuation of occupational therapy services is based on whether the client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services, or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist must review any information from the occupational therapy assistant(s), determine if goals were met or not, complete and sign the discharge or discontinuation of occupational therapy services documentation, and/or make recommendations for any further needs of the client in another continuum of care.

§372.2. General Purpose Occupation-Based Instruction.

(a) Occupational therapy practitioners may develop or facilitate general purpose, occupation-based groups or classes including but not limited to handwriting groups, parent-child education classes, wellness-focused activities for facility residents, aquatics exercise groups, and cooking for diabetics classes.

(b) These services do not require individualized evaluation and plan of care services but practitioners may develop goals or curriculums for the group as a whole. If a participant requires individualized occupational therapy services, these may only be provided in accordance with §372.1 of this title (relating to Provision of Services).

[~~(c) Supervision requirements for services provided pursuant to this section shall be completed in accordance with §373.3 of this title (relating to Supervision of an Occupational Therapy Assistant).~~]

(c) [~~(d)~~] When general purpose occupation-based instruction is being provided pursuant to §372.2, the OT must approve the curricular goals/program prior to the OTA's initiating instruction.

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 22, 2019.

TRD-201900626
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 305-6900

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CHAPTER 373. SUPERVISION

40 TAC §373.3

The Texas Board of Occupational Therapy Examiners proposes the repeal of §373.3, concerning supervision of an occupational therapy assistant. The repeal would remove requirements from the chapter concerning the supervision of an occupational therapy assistant with a regular license.

The repeal of §373.3 would remove from the OT Rules the supervision requirements in that section, which concern the supervision of an occupational therapy assistant with a regular license. Such requirements include that an occupational therapy assistant must submit the Supervision of an Occupational Therapy Assistant form with the employer information and name and license number of one of the occupational therapists working for the employer who will be providing supervision. The repeal would also remove from the OT Rules requirements concerning the Supervision Log and requirements that occupational therapy assistants with a regular license receive frequent communication supervision and interactive supervision from occupational therapists.

Changes to §369.2, concerning changes of name or address, have also been proposed and submitted to the *Texas Register* for publication. Proposed changes to that section include the removal of requirements concerning the submission of supervisor information by an occupational therapy assistant with a regular license.

The repeal of the section would not remove all requirements concerning the supervision of an occupational therapy assistant with a regular license from the OT Rules as requirements regarding supervision already appear in further rule sections, including that in each intervention note, the occupational therapy assistant must include the name of an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services and that the occupational

therapy assistant may not provide services unless this requirement is met.

FISCAL NOTE

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the repeal would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the repeal as the changes do not impose a cost.

LOCAL EMPLOYMENT IMPACT

Mr. Maline has determined that the repeal would not impact a local economy as the proposed repeal concerns the reduction of supervision requirements and does not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Maline has also determined that for each of the first five years the proposed repeal would be in effect, the public benefit anticipated as a result of the repeal would be the reduction of supervision requirements concerning occupational therapy assistants with a regular license with the possible effect of increasing consumer access to occupational therapists and occupational therapy assistants. There would be no anticipated economic cost to persons required to comply with the repeal.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed repeal concerns the reduction of supervision requirements and does not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the proposed repeal.

TAKINGS IMPACT ASSESSMENT

The proposed repeal would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed repeal's impact on government growth during the first five years the repeal would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the 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 an existing regulation; would repeal the existing regulation that occupational therapy assistants submit the Occupational Therapy Assistant Supervision form and would repeal existing regulations concerning the required supervision hours an occupational therapy assistant with a regular license must receive; would not increase the number of individuals subject to the rule's applicability; would decrease the number of individuals subject to the rule's applicability because the rule would be repealed; and would neither positively nor adversely affect this state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed repeal because as the repeal does not impose a cost, it does not increase costs to regulated persons.

PUBLIC COMMENT

Comments on the proposed repeal may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed repeal is published in the *Texas Register.*

STATUTORY AUTHORITY

The repeal is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§373.3. Supervision of an Occupational Therapy Assistant.

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 22, 2019.

TRD-201900627
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: April 7, 2019
For further information, please call: (512) 305-6900

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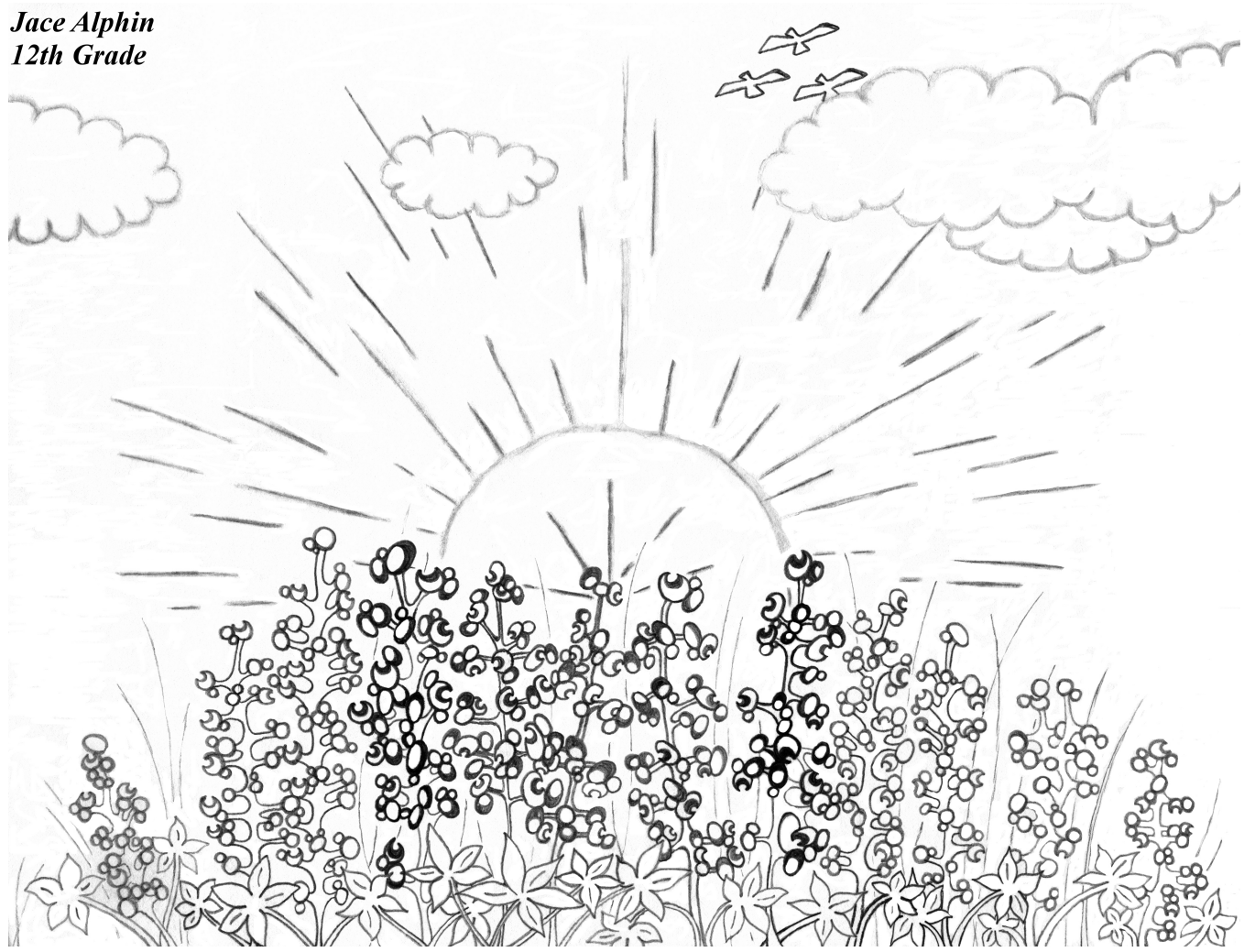
Jace Alphin
12th Grade



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.131

The Texas State Board of Pharmacy withdraws the proposed amended §291.131 which appeared in the January 4, 2019, issue of the *Texas Register* (44 TexReg 38).

Filed with the Office of the Secretary of State on February 20, 2019.

TRD-201900605
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: February 20, 2019
For further information, please call: (512) 305-8010

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22 TAC §291.133

The Texas State Board of Pharmacy withdraws the proposed amended §291.133 which appeared in the January 4, 2019, issue of the *Texas Register* (44 TexReg 44).

Filed with the Office of the Secretary of State on February 20, 2019.

TRD-201900606
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: February 20, 2019
For further information, please call: (512) 305-8010

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SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.153

The Texas State Board of Pharmacy withdraws the proposed amended §291.153 which appeared in the January 4, 2019, issue of the *Texas Register* (44 TexReg 48).

Filed with the Office of the Secretary of State on February 20, 2019.

TRD-201900607
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: February 20, 2019
For further information, please call: (512) 305-8010

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

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PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 30. COMMUNITY DEVELOPMENT

SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

The Texas Department of Agriculture (Department) adopts amendments to Title 4, Part 1, Chapter 30, Subchapter A, Division 1, §30.3 of the Texas Administrative Code, relating to Program Overview; the repeal of Subchapter A, Division 3, §30.64, relating to the Community Enhancement Fund; the amendment of Division 3, §30.52, relating to the Texas Capital Fund Real Estate and Infrastructure Development Programs; and new Subchapter A, Division 3, §30.64, relating to the Fire, Ambulance & Services Truck Fund. The adoptions are made without changes to the proposal published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 14) and will not be republished.

No comments were received on the proposal.

DIVISION 1. GENERAL PROVISIONS

4 TAC §30.3

The adoption is made under Texas Government Code, §487.051, which designates the Department as the agency to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the adoption is Texas Government Code, Chapter 487.

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 22, 2019.

TRD-201900636
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: March 14, 2019
Proposal publication date: January 4, 2019
For further information, please call: (512) 463-4075

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DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

4 TAC §30.52, §30.64

The adoption is made under Texas Government Code, §487.051, which designates the Department as the agency to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the adoption is Texas Government Code, Chapter 487.

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 22, 2019.

TRD-201900638
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: March 14, 2019
Proposal publication date: January 4, 2019
For further information, please call: (512) 463-4075

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4 TAC §30.64

The proposal is made under Texas Government Code §487.051, which provides the Department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is Texas Government Code, Chapter 487.

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 22, 2019.

TRD-201900637

Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: March 14, 2019
Proposal publication date: January 4, 2019
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts without changes the repeal of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP) as published in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8195). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2019 SLIHP.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. David Cervantes, Acting Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption by reference the 2019 SLIHP, as required by Tex. Gov't Code §2306.0723.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption in order to adopt by reference the 2019 SLIHP.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes, Acting Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated rule under separate action, in order to adopt by reference the 2019 SLIHP. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The public comment period for the proposed repeal and proposed new rule was held between December 21, 2018, and January 9, 2019. The public comment period for the draft 2019 SLIHP was held between December 10, 2018, and January 9, 2019. A public hearing for the draft 2019 SLIHP was held on December 18, 2018, in Austin, Texas. Written comments were accepted by mail, email, and facsimile. The Department received no public comment on the draft 2019 SLIHP or on the proposed repeal and proposed new rule.

The TDHCA Governing Board approved the 2019 SLIHP and the final order adopting the repeal on February 21, 2019.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 25, 2019.

TRD-201900640

David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Effective date: March 17, 2019
Proposal publication date: December 21, 2018
For further information, please call: (512) 463-7961

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10 TAC §1.23

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP), without changes to the proposed text as published in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8196). The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2019 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2019 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2017, through August 31, 2018).

Tex. Gov't Code §2001.0045(b) does not apply to the adopted rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. David Cervantes, Acting Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2019 SLIHP, as required by Tex. Gov't Code 2306.0723.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The new rule will not expand, limit, or repeal an existing regulation.

7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.0723.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the new rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the new rule will adopt by reference the 2019 SLIHP, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the new rule will adopt by reference the 2019 SLIHP; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule will adopt by reference the 2019 SLIHP there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes, Acting Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule that will adopt by reference the 2019 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the new rule will adopt by reference the 2019 SLIHP.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The public comment period for the proposed new rule was held between December 21, 2018, and January 9, 2019. The public comment period for the draft 2019 SLIHP was held between December 10, 2018, and January 9, 2019. A public hearing for the draft 2019 SLIHP was held on December 18, 2018, in Austin, Texas. Written comments were accepted by mail, email, and facsimile. The Department received no public

comment on the draft 2019 SLIHP or on the proposed repeal and proposed new rule.

The TDHCA Governing Board approved the 2019 SLIHP and the final order adopting the new rule on February 21, 2019.

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted new section affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 25, 2019.

TRD-201900641
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Effective date: March 17, 2019
Proposal publication date: December 21, 2018
For further information, please call: (512) 463-7961

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SUBCHAPTER B. ACCESSIBILITY AND REASONABLE ACCOMMODATIONS

10 TAC §§1.201 - 1.207, 1.209, 1.210, 1.212

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Administration, Subchapter B, §§1.201 - 1.207, 1.209, 1.210, and 1.212, concerning Accessibility and Reasonable Accommodations without changes as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7607) and will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. David Cervantes, Acting Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing Accessibility and Reasonable Accommodations.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for accessibility and accommodation activity.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from November 23, 2018, to December 27, 2018, to receive input on the repealed section. No public comment was received on the repeal.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the adopted repealed sections affect no other code, article, or statute.

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

Filed with the Office of the Secretary of State on February 25, 2019.

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Proposal publication date: November 23, 2018
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10 TAC §§1.201 - 1.207

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, new 10 TAC Chapter 1, Administration, Subchapter B, §§1.201 - 1.207, Accessibility and Reasonable Accommodations, as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7608) and will be republished. The purpose of the proposed new sections are to make changes that revise citations and references, add the Ending Homelessness Fund to covered programs, provide the statutory authority and purpose of the rule, add a section clarifying applicability of the rule, add a new section providing initial general direction in the handling of reasonable accommodations to assist property management staff, remove specific examples and create a new section that provides a list of possible non-exhaustive examples, delete §1.209(a) because there are no longer any Developments in the construction or Development process that require the exceptions that had been provided by this clause, move §1.209(b) to §1.207(c) and bring that into compliance with the Uniform Multifamily Rule, and delete 10 TAC §1.210, Renovation of Elements for Multifamily Housing Developments, to provide consistency with changes in the Uniform Multifamily Rules which now require that all developments awarded by the Department - even if for rehabilitation - will be considered Substantial Alterations, and by association removes the definition for Replacement Cost.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under items (4) and (9) of that section. The rule ensures Department compliance with the Fair Housing Act and other federal civil rights laws. In spite of these exceptions, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. David Cervantes, Acting Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern accessibility and reasonable accommodations.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and

8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures in place for properties and subrecipients that have been funded by the Department. Other than in the case of a small or micro-business that participate in such programs, no small or micro-businesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for the handling of reasonable accommodations and accessibility.

3. The Department has determined that because this rule relates only to a revision to a rule subrecipients/owners and tenants of an existing program, and the rule changes primarily make minor edits and remove examples, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the processes used in existing multifamily properties and other portfolio subrecipients; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a clearer rule for Recipients and assurance of the program having transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for

each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from November 23, 2018, through December 27, 2018, to receive input on the proposed rule. Public comment and reasoned response are provided. Public comment was received from five commenters: Central Texas Housing Consortium (#1), Housing Authority of the City of Austin (#2), Texas Affiliation of Affordable Housing Providers (#3), Fountainhead Management, Inc. (#4), and Rural Rental Housing Association of Texas (#5).

General Comment One - (Commenter (4))

COMMENT SUMMARY: The commenter notes that they find it interesting that such a significant revision to this rule would be deemed to have no economic effect, and commented that they feel "the Department believes that it has carte blanche to adopt any rule it desires since it believes it has unfettered ability to enact mandates with prospective and retroactive effect."

STAFF RESPONSE: Staff disagrees with this comment. The Department goes through a rigorous rule-making process, pursuing significant public comment and input; furthermore, the Department obtains review by the Office of the Governor for all rule publications prior to submission to the Board. In the case of this particular rule, the Department reflected in its preamble that only the incremental difference of what the rule revisions were putting in place would not in fact have costs. While taking the rule as a whole, may in fact be considered to have costs, the evaluation of whether there is a cost considers only those parts of the rule being revised. No suggested changes are recommended.

General Comment Two - (Commenter (4))

COMMENT SUMMARY: The commenter notes that "as a global comment, the rule as a whole has the feel that the burden of proof is upon of owner or program participant to prove beyond a doubt that it has complied with the nebulous area of what is a "reasonable accommodation" and what is a "covered disability." The commenter then gives section specific examples and questions. Those issues are addressed in section specific comments below. The commenter also concludes with: "Would it not be in the best interest of TDHCA and all of the program participants if it merely referred the covered programs and then leave compliance up to the Texas Workforce Commission which has the legislative authority over Fair Housing. I believe most owners are willing to provide reasonable accommodations when there is a documented need for the accommodation." The commenter voiced concern that drafting rules on the presumption that all owners are "bad actors" will prompt properties to leave the program.

STAFF RESPONSE: As noted above the instances in which specific comments or questions are made are addressed separately from this global comment. Furthermore, the Department is subject to other rules other than the Fair Housing Act. The Department does not believe that its rules are crafted on a presumption that owners are "bad actors," however, the rules do exist to not only ensure federal and state laws and requirements are met, but also to protect tenants. Generating rules with that purpose does not mean the Department presumes any particular behavior of properties. No revisions are recommended.

§1.204(b)(1)(B) - Considerations in Monitoring (Commenter (4))

COMMENT SUMMARY: The commenter states that:

"§1.204(b)(1)(B) is not clear and will create uncertainty. That section states: the program participant... "took into consideration how action on the request would impact the person making the request and worked to avoid responding in a manner that was prejudicial to the requestor in a way that could have been avoided..." What does that even mean. Isn't the test whether the accommodation is made a disabled person and is necessary for the person with the disability to have equal opportunity to use and enjoy a dwelling."

The commenter expands on this issue and also asks how will the clause relating to "working to avoid responding in a manner that was prejudicial..." be monitored.

STAFF RESPONSE: Staff agrees that the second part of subparagraph (B), as proposed, is overly subjective, and may present challenges in adherence and in monitoring. Staff suggests revisions as reflected below.

"(1) When the Department monitors a property or activity for how reasonable accommodation requests have been handled, it will consider such things as whether the person working on behalf of the program or property which the Department is monitoring:

(A) timely received the request and recorded it;

(B) took into consideration how action on the request would impact the person making the request. Deleting *and worked to avoid responding in a manner that was prejudicial to the requestor in a way that could have been avoided;* and"

§1.204(b)(3) and (d) - Reasonable Accommodation Response Time (Commenters (1), (2), (3), (4), and (5))

COMMENT SUMMARY: The commenters (1, 2, 3, 4, and 5) indicated their strong opposition to changing the response time within which a property must respond to a reasonable accommodation request from 14 days to three days.

Commenter 1 said that they have processed more than 800 reasonable accommodation requests, their average processing time is 10 to 14 days, and a 3-day turnaround response time is not achievable. When a response from a medical professional is needed or a property visit is needed to develop a plan or budget to address the request, three days is insufficient. Further Commenter 1 believes that changing the requirement will create additional administrative work for the property.

Commenter 2 emphasizes their commitment to affirmatively furthering fair housing and discussed some of the actions they have taken that indicate such. Commenter 2 indicates that it addresses an average of 140 reasonable accommodation requests per year, many of which include multiple modifications and/or accommodations to assess. They think that the 3 day response time should be reconsidered because many accommodations can be complicated to assess particularly when considering the nexus between the disability, reasonableness, financial costs, and policy; the increasing volume of accommodation requests would make such a short turn around an undue burden (they estimate that it would require their agency to hire an additional full time employee); and that the dialogue that occurs through a longer period can result in a better result than if the property is rushing to meet a deadline. Commenter 2 requested the response time be revise to no less than 12 business days for complicated requests and no less than 7 business days for routine requests.

Commenters 3 and 5 echoed that the revision from 14 days to 3 days is unreasonable and impractical and is more restrictive that federal 504 code requirements. Commenter 3 noted that when this change was made, the Board materials for the draft rule did not indicate why 3 days had been selected, and felt that such a significant change should have had more extensive dialogue and a round table. This commenter is requesting that the rule either revert back to the 14-day response period or that the public comment period on the rule be extended so that a round table can be hosted.

Commenter 4 agreed that the timeline having been reduced by 78.57% is unworkable.

Commenter 5 noted that while some requests can be made quickly, simple requests are an exception to the standard and that the proposed standard seeks to penalize in a manner that incentivizes stakeholders to make quick judgments and may increase the likelihood of mistakes.

STAFF RESPONSE: Staff agrees that the change was not well-vetted prior to publication and that a period significantly shorter than 14 days is not practicable. Staff does not suggest distinguishing between complicated and routine requests, as that can be subjective and only adds to the challenge for the monitor in making such a determination. Staff recommends reverting to the original 14 calendar day response time, but also reverting to the current rule that is taken from federal guidance documents and case law that provide illustrative examples when a 14 day period would not be reasonable.

"(3) Unless there is a clear documented need for a lengthier process or there is a controlling federal statute or regulation specifying a different deadline, when a person requests an accommodation they should be given a response as soon as possible but not later than [three business] 14 *calendar* days."

"(d) Responses to Reasonable Accommodation requests must be provided within a reasonable amount of time, not to exceed [three business] 14 *calendar* days. The response must either be to grant the request, deny the request, offer alternatives to the request, or request additional information to clarify the Reasonable Accommodation request. *Examples when it would not be reasonable to wait 14 calendar days to provide a response include but are not limited to: moving the due date for rent to coincide with the date the requestor receives their social security disability check; allowing a service animal in an emergency shelter in spite of a no pets policy; or assisting an applicant with a Disability that prevents them from writing legibly when they request help filling out an program or project application.* Should additional information be required and an interactive process be necessary, this process must also be completed within a reasonable amount of time. An undue delay in responding to a Reasonable Accommodation request may be deemed by the Department to be a failure to provide a Reasonable Accommodation."

§1.204(g) - Reasonable Accommodations (Commenter (3))

COMMENT SUMMARY: The commenter recommended minor revisions to clause (g) to make it clearer. They are concerned that it may be possible to interpret the new rule to mean that a reasonable accommodation must first provide full compliance with an applicable accessible code, and after providing as such is only then, not limited, in providing something that is more accessible or restrictive in its requirements. Specifically, persons who have attended numerous TDHCA Final Construction Inspections feel that this will result in findings that are due to residents who have been provided with reasonable accommodations, but those accommodations don't fully comply with a particular code, but that do serve their unique needs. The suggested edits from the commenter would remedy this issue.

STAFF RESPONSE: Staff finds the suggested revisions reasonable and the rule change is proposed below, reflective of what was proposed by the commenter. The Department has added an addition sentence to clarify that the Recipient must still follow its Contract or LURA requirements, if those require accessible code specifications.

"(g) A Reasonable Accommodation request of an individual with a Disability that amounts to an Alteration should be made to meet the needs of the individual with a Disability, rather than being limited [by] *to compliance with a* [any] particular accessible code specification. *However, the Recipient must still follow accessible code specifications as identified in its Contract or LURA."*

§1.204(g)(3)(B) - Reasonable Accommodations (Commenter (3))

COMMENT SUMMARY: The commenter (5) suggested deleting two words "normally" in clause (ii) and "some" in clause (iii) because elimination of these two words provides a more concrete and fair basis for the rule. If greater clarification is desired, the Department should be specific.

STAFF RESPONSE: Staff agrees that this language could be improved upon. However, this language is taken from a federal guidance document regarding reasonable accommodation requests, HUD Handbook 4350.3, §2-43. HUD has not provided a bright line test to be used, but instead that requests must be examined on a case by case basis. Staff does recommend edits as shown below to more clearly track the federal guidance.

"(B) In considering whether an expense would constitute an undue burden the Department may, as applicable, consider the following items (though it may consider factors not on this list):

(i) payment for Alteration from operating funds, residual receipts accounts, or reserve replacement accounts must be sought using appropriate approval procedures.

(ii) the approved amount must *generally* [normally] be able to be replenished through property rental income within one year without a corresponding raise in rental rates.

(iii) a projected inability to replenish an operating fund account or the reserve for replacement account within one year for funds spent in providing *Alterations* [alterations] under this [subchapter] *subsection* is some evidence that the Alteration would be an undue financial and administrative burden.

§1.207(c) - General Requirements for Multifamily Housing Developments (Commenter (3))

COMMENT SUMMARY: The commenter recommended that since program staff evaluates unit distribution at the time of application, this section of the rule should add language to allow an owner to rely on staff review at application, and not be forced to convert to a different distribution after a compliance inspection at the property after it is constructed. Sample language suggested was: "*If through the application process the manner in which the units are distributed is deemed acceptable, and there is no change from the representations in the application to what is represented in a final construction inspection, the compliance will consider compliant under this section."*

STAFF RESPONSE: Staff does not agree with this recommendation. While staff is performing a review on unit distribution at

the time of application, as noted, it is doing so based on only the documentation submitted at that time; in many cases site and unit plans and designs continue to change significantly, or the information presented in the application may not include physical factors that are then evident at the final construction inspection.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

§1.201. Purpose.

(a) The purpose of this subchapter is to establish a framework for informing compliance with the requirements of Tex. Gov't Code §§2306.6722, 2306.6725, and 2306.6730, and the requirements of the Americans with Disabilities Act, Section 504 of the 1973 Rehabilitation Act (Section 504) and the Fair Housing Act for Recipients of awards from the Texas Department of Housing and Community Affairs (the Department) including but not limited to:

(1) Community Services Block Grant;

(2) Low Income Home Energy Assistance Program (LIHEAP) (including the two programs utilizing this funding source: the LIHEAP Weatherization Assistance Program and the Comprehensive Energy Assistance Program);

(3) Emergency Solutions Grant (ESG);

(4) State Housing Trust Fund;

(5) Low Income Housing Tax Credit;

(6) Multifamily Bond Programs (Bond);

(7) National Housing Trust Fund;

(8) Neighborhood Stabilization Program (NSP);

(9) HOME;

(10) TCAP;

(11) TCAP- Returned Funds;

(12) Section 8;

(13) Department of Energy Weatherization Assistance Program;

(14) Homeless Housing and Services Program (HHSP); and

(15) Ending Homelessness Fund (EH).

(b) Unless otherwise indicated in the applicable notice of funding availability or required by contract, this subchapter does not apply to contracts for the procurement of goods or services by the Department.

§1.202. Definitions.

Capitalized words in this subchapter have the meaning assigned in the specific chapter and rules of the title that govern the program associated with matter or assigned by federal or state law. In addition, the following terms are used for the purposes of this subchapter:

(1) 2010 ADA Standards--The term 2010 ADA Standards refers to the 2010 ADA Standards for Accessible Design implementing Title II of the Americans with Disabilities Act of 1990, including the ADA Amendments of 2008, found at 28 CFR Part 35. This term includes both the Title II (28 CFR §35.151) and 2004 ADAAG (36 CFR Part 1991). If there is a conflict between 2004 ADAAG and Title II the requirements of Title II prevail.

(2) Accessible Route--A continuous unobstructed path connecting accessible elements and spaces in a facility or building that complies with the space and reach requirements of the applicable accessibility standard.

(3) Alteration--Any physical change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.

(4) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Nothing in this definition requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Included in this meaning is the term handicap as defined in the Fair Housing Act, and the term disability as defined in the Americans with Disabilities Act.

(5) Multifamily Housing Development--A project that includes five or more dwelling units. A project may consist of five single family homes, a single building with five or more units, or five or more units in multiple buildings each with one or more units. A project includes the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application, or which are treated as a whole for processing purposes, whether or not located on a common site.

(6) Reasonable Accommodation--An accommodation and/or modification that is an alteration, change, exception, or adjustment to a program, policy, service, building, or dwelling unit, that will allow a qualified person with a Disability to:

(A) Participate fully in a program;

(B) Take advantage of a service;

(C) Live in a dwelling; or

(D) Use and enjoy a dwelling.

(7) Recipient--Includes a Subrecipient or Administrator and means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to whom assistance or an award is extended for any program or activity directly or through another Recipient, including any successor, assignee, or transferee of a Recipient, but excluding the ultimate beneficiary of the assistance. Recipients include private entities in partnership with Recipients to own or operate a program or service. This term includes Development Owner.

§1.203. General Requirements and Effect of Non Compliance.

(a) No individual with a Disability shall, by reason of their Disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any Department awarded program or activity.

(b) There are additional requirements for compliance with Section 504 of the 1973 Rehabilitation Act; Title VI of the Civil Rights Act of 1964; the Fair Housing Act; the Americans with Disabilities Act; and other civil rights laws, regulations and Executive Orders by Recipients of Department program or activities. This subchapter addresses only the requirements relating to physical accessibility, and reasonable accommodations under Section 504, the American with Disabilities Act, and the Fair Housing Act. Other disability-related requirements include but are not limited to:

(1) Operating housing that is not segregated based upon disability or type of disability, unless authorized by federal statute or executive order;

(2) Providing auxiliary aids and services necessary for effective communication with persons with disabilities; and

(3) Operating programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(c) Compliance with accessibility requirements, as applicable, including compliance with the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, other civil rights laws, regulations and Executive Orders; and Chapters 2105 and 2306 of the Tex. Gov't Code is the sole responsibility of the Recipient. By providing guidance and monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Recipient.

(d) Failure to comply with the provisions of this subchapter may result in the assessment of administrative penalties and/or debarment, as further outlined in this title.

§1.204. Reasonable Accommodations.

(a) Applicability. This policy relates to a request for Reasonable Accommodations made by an applicant or participant of a Department program to a Recipient, or made by an applicant or occupant to a property funded by the Department to the property. The policy regarding a request for Reasonable Accommodation by the Department is found at 10 TAC §1.1 of this chapter.

(b) General Considerations in Handling of Reasonable Accommodations. An applicant, participant, or occupant who has a disability may request an accommodation and, depending on the program funding the property or activity and whether the accommodation requested is a reasonable accommodation, their request must be timely addressed.

(1) When the Department monitors a property or activity for how reasonable accommodation requests have been handled, it will consider such things as whether the person working on behalf of the program or property which the Department is monitoring:

(A) Timely received the request and recorded it;

(B) Took into consideration how action on the request would impact the person making the request; and

(C) Engaged in communication with the requestor to understand the nature of their request and whether there was a reasonable way to make an accommodation.

(2) If the person responsible for responding to a request for an accommodation needs assistance or clarification as to how the requirement may apply to their program or property they should contact the Compliance Division immediately to discuss the matter. The Compliance Division cannot provide legal advice or direct the person to respond in any specific manner, but they can, in some instances, point to appropriate federal guidance or other resources such as the Texas Workforce Commission Civil Rights Division. A person who contacts the Compliance Division or anyone else for such reasons should document such contact in their files because the process of obtaining guidance may impact the timeliness of their response.

(3) Unless there is a clear documented need for a lengthier process or there is a controlling federal statute or regulation specifying a different deadline, when a person requests an accommodation they should be given a response as soon as possible but not later than 14 calendar days.

(c) To show that a requested Reasonable Accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual's Disability.

(d) Responses to Reasonable Accommodation requests must be provided within a reasonable amount of time, not to exceed 14 calendar days. The response must either be to grant the request, deny the request, offer alternatives to the request, or request additional information to clarify the Reasonable Accommodation request. Examples when it would not be reasonable to wait 14 calendar days to provide a response include but are not limited to: moving the due date for rent to coincide with the date the requestor receives their social security disability check; allowing a service animal in an emergency shelter in spite of a no pets policy; or assisting an applicant with a Disability that prevents them from writing legibly when they request help filling out an program or project application. Should additional information be required and an interactive process be necessary, this process must also be completed within a reasonable amount of time. An undue delay in responding to a Reasonable Accommodation request may be deemed by the Department to be a failure to provide a Reasonable Accommodation.

(e) When a participant, applicant, or occupant requires an accessible unit, feature, space or element, or a policy modification, or other Reasonable Accommodation to accommodate a Disability, the Recipient must provide and pay for the requested accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is an accommodation that is so significant that it alters the essential nature of the Recipient's operations. A Recipient that owns a tax credit or Multifamily Bond Development with no federal or state funds awarded before September 1, 2001, must allow but may not need to pay for the Reasonable Accommodation, except if the accommodation requested should have been made as part of the original design and construction requirements under the Fair Housing Act, or is a Reasonable Accommodation identified by the U.S. Department of Justice or the U.S. Department of Housing and Urban Development with a de minimis cost (e.g., assigned existing parking spot and no deposit for service/assistance animals).

(f) A Recipient may not charge a fee or place conditions on a participant, occupant, or applicant in exchange for making the accommodation.

(g) A Reasonable Accommodation request of an individual with a Disability that amounts to an Alteration should be made to meet the needs of the individual with a Disability, rather than being limited to compliance with a particular accessible code specification. However, the Recipient must still follow accessible code specifications, as identified in its Contract or LURA.

(1) Recipients are not required to make structural changes where other methods, which may not cost as much, are effective in making programs or activities readily accessible to and usable by persons with Disabilities.

(2) In choosing among available methods for meeting the requirements of this section, the Recipient must give priority to those methods that offer programs and activities to qualified individuals with Disabilities in the most integrated setting appropriate.

(3) Undue burden.

(A) The determination of undue financial and administrative burden will be made by the Department on a case-by-case basis, involving various factors, such as the cost of the Reasonable Accommodation, the financial resources of the Development, the benefits the accommodation would provide to the requester, and the availability of

alternative accommodations that would adequately meet the requester's Disability-related needs.

(B) In considering whether an expense would constitute an undue burden the Department may, as applicable, consider the following items (though it may consider factors not on this list):

(i) payment for Alteration from operating funds, residual receipts accounts, or reserve replacement accounts must be sought using appropriate approval procedures.

(ii) the approved amount must generally be able to be replenished through property rental income within one year without a corresponding raise in rental rates.

(iii) a projected inability to replenish an operating fund account or the reserve for replacement account within one year for funds spent in providing Alterations under this subsection is some evidence that the Alteration would be an undue financial and administrative burden.

(C) If providing accessibility would result in an undue financial and administrative burden, the Recipient must still take other reasonable steps to achieve accessibility.

(D) If a structural change would constitute an undue financial and administrative burden, and the tenant/requestor still wants that particular change to be made, the tenant/requestor must be allowed to make and pay for the accommodation.

(4) Recipients are not required to install an elevator solely for the purpose of making units accessible as a Reasonable Accommodation.

(5) Recipients do not have to make mechanical rooms and similar spaces accessible when, because of their intended use, they do not require accessibility by the public, by tenants, or by employees with physical disabilities.

(6) Recipients are not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member, as a Reasonable Accommodation.

(h) If a Recipient refuses to provide a requested accommodation because it is either an undue financial and administrative burden or would result in a fundamental alteration to the nature of the program, the Recipient must make a reasonable attempt to engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's Disability-related needs. If an alternative accommodation would meet the individual's needs and is reasonable, the Recipient must provide it.

(i) Examples of reasonable accommodations, while not exhaustive, include moving the due date for rent to coincide with the date the requestor receives their social security disability check; providing a designated accessible parking space from existing parking spaces; creating an accessible parking space to accommodate a wheelchair-equipped van; allowing a service animal in spite of a no pets policy; modifying door knobs to levers; providing assistance in filling out a program application for the activity or unit; in the case of a service provider providing computer lab classes with laptops, providing a loan of the laptop computer with the training software; in the case of a weatherization provider serving a family with a child with asthma, seeing if an alternative sealant could be used when the sealant typically used may trigger an asthma attack; installing grab bars; providing an accessible entrance to a resident's current unit, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so; and providing a ramp in excess of usual specifications for such alternations to accommodate a scooter type wheelchair, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.

(j) Recipients must follow federal and state regulations regarding service/assistance animals. A housing provider may not require an applicant, participant, or occupant to pay a pet deposit if the animal is a service/assistance animal.

§1.205. Compliance with the Fair Housing Act.

(a) Generally, housing designed and constructed for first occupancy after March 13, 1991, must comply with the Fair Housing Act. This includes Units, common areas, and amenities added to existing buildings, or on land under common ownership and contiguous with housing otherwise exempt from the Fair Housing Act.

(b) Compliance with the Fair Housing Act makes it unlawful to discriminate based on a person's disability, race, color, religion, sex, familial status, or national origin unless there is an exception in federal law.

(c) The Department requires compliance with HUD's Fair Housing Act Design Manual, including the ability to claim exemptions or exceptions provided for therein.

§1.206. Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.

(a) The following types of Multifamily Housing Developments must comply with the construction standards of §504 of the Rehabilitation Act of 1973, as further defined through the Uniform Federal Accessibility Standards (UFAS):

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction before March 12, 2012;

(2) Rehabilitation HOME and NSP Multifamily Housing Developments that submitted a full application for funding before January 1, 2014; and

(3) All Housing Tax Credit and Tax Exempt Bond Developments that were awarded after September 1, 2001, and submitted a full application before January 1, 2014.

(b) The following types of Multifamily Housing Developments must comply with the construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 *Federal Register* 29671 and not otherwise modified in this subchapter:

(1) New construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction after March 12, 2012; and

(2) All Multifamily Housing Developments that submit a full application for funding after January 1, 2014.

(c) Recipients of ESG, EH, and HHSP funds must comply with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 *Federal Register* 29671 and not otherwise modified in this subchapter.

(d) Effect on LURAs. These rules do not serve to amend contractual undertakings memorialized in a recorded LURA but may, by operation of law, place requirements on a property owner beyond those contained in the LURA.

§1.207. General Requirements for Multifamily Housing Developments.

(a) All Units that are accessible to persons with mobility impairments must be on an Accessible Route.

(b) Recipients must give priority to methods that offer housing in the most integrated setting possible (i.e., a setting that enables qualified persons with Disabilities and persons without Disabilities to interact to the fullest extent possible). This means the distribution will provide individuals requiring accessible units with a choice of location, layout, and price that is substantially equivalent to the choice available to others. Distribution of accessible units may be further described in federal law, regulation, or governing Rules in this Title. To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

(1) Distributed throughout the Development and site; and

(2) Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with Disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

(c) All Multifamily Housing Developments that submit full applications after January 1, 2014, must have a minimum of 5 percent of Units that are accessible to persons with mobility impairments, and a minimum of 2 percent of the Units must be accessible to persons with visual and hearing impairments. In addition, common areas and amenities must also be accessible as identified in the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 *Federal Register* 29671.

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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Acting Director
Texas Department of Housing and Community Affairs
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SUBCHAPTER D. UNIFORM GUIDANCE FOR RECIPIENTS OF FEDERAL AND STATE FUNDS

10 TAC §1.410

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, new 10 TAC Chapter 1, Administration, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.410, Determination of Alien Status for Program Beneficiaries, as proposed in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7612). The rule will be republished. The purpose of the new section is to address concerns identified by the U.S. Department of Health and Human Services (HHS) in a recent monitoring of the Department for the Low Income Home Energy Assistance Program (LIHEAP) and to provide clear guidance to any private nonprofit subrecipients doing business with the Department that receive funds from the Department for a federal program for which the federal oversight agency has indicated that legal status is required to receive a benefit as further provided for in Personal Responsibility and Work Opportunity Reconciliation Act of 1986 (PRWORA).

Tex. Gov't Code §2001.0045(b) does not apply to the new rule because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. Compliance with the new rule is intended to ensure adherence to federal law, Tex. Gov't Code Chapter 2306, Subchapter E, and provide for the implementation of this activity.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. David Cervantes, Acting Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but provides interpretation and guidance for how the Department, and its subrecipients of certain federal funds, will comply with PRWORA.

2. The new rule does not reduce work load such that any existing employee positions can be eliminated. The new rule may create a change in work that could require the temporary or permanent creation of new employee positions. The rule as drafted provides options for how the Department will ensure verification of legal status is occurring, if required by the federal oversight agency, when the Department's subrecipient organization is a private nonprofit, who is exempt under PRWORA from having to perform such verification. One of the options provided for how a private nonprofit subrecipient might elect to ensure compliance is occurring with the households they serve would be for the nonprofit to gather and transmit client information to the Department so that verification can occur. The Department may have to perform the verifications which could require staffing. It is estimated that this option could require from two to four FTEs.

3. The new rule does not require additional future legislative appropriations. If employee positions are needed as noted above, resources to cover the costs of those positions would come from federal LIHEAP administrative funds, not additional appropriations.

4. The new rule does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is creating a new regulation, but only to the extent that it formalizes the methods by which a federal program requirement is implemented. The requirement prompting the rule is a condition of receiving federal LIHEAP and DOE funds.

6. The new rule will not expand or repeal an existing regulation, but formalizes the methods by which a federal program requirement is implemented. The federal program requirement could be considered to "limit" this activity because the new rule will require verification of legal status of household members applying for assistance from certain programs. Those programs are federally limited to be provided only to those applicants who are United States Citizens, United States Nationals, or Qualified Aliens. Applicants not able to provide proper documentation of United States legal status (i.e., Unqualified Aliens) will not receive assistance and households containing Unqualified Aliens may receive a lesser amount of assistance, or be denied assistance altogether depending on the income level of the household. This potentially limiting action of verification is necessary

to ensure compliance with §2605(b)(2) of the Low Income Home Energy Assistance Act (42 U.S.C. §8624(b)(2)) which was identified by HHS in a recent monitoring of the Department.

7. The new rule will potentially decrease the number of individuals subject to the rule as described in 6 above.

8. The new rule will not negatively nor positively affect this state's economy. While some households currently eligible for the program may no longer qualify for assistance, there are other qualified households who will be eligible, so no reduction in actual program funding expended in communities is expected.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code Chapter 2306, Subchapter E.

The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.

The Department has determined that because this rule is only applicable to nonprofits and local governments that are designated as community action agencies there will be no economic effect on small or micro-business or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule merely provides guidance on how existing subrecipients of the Department will handle a particular step in verification of household eligibility, and that the rule is applied statewide, the rule does not change issues affecting employment, there are no "probable" effects of the new rule on particular geographic regions.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be changes needed to address concerns identified by the U.S. Department of Health and Human Services ("HHS") in a recent monitoring and to ensure compliance with federal PRWORA requirements that ensure that no federal benefits are provided to Unqualified Aliens.

There may be a possible small economic cost to participating network organizations if they opt to bring their operations and processes into compliance with §2605(b)(2) of the Low Income Home Energy Assistance Act (42 U.S.C. §8624(b)(2)) which was identified by HHS in a recent monitoring of the Department. If a current nonprofit Subrecipient is unable to agree to perform under one of the options provided by the rule, the Department will have no other way to ensure verification is occurring as required by HHS. Because HHS has affirmed that the Department (and the Subrecipient) take on financial liability for any potential disallowed costs associated with serving an ineligible household, the Department cannot allow Subrecipients to opt out of all options and have no verifications performed as this increases the potential liability for the state. The Department would therefore be compelled to identify an alternate Subrecipient that can ensure such verification. This would require rebidding those portions of the network that do not elect one of these options. If such a rebidding occurred, some costs would be involved as the new replacement provider is trained, and clients transitioned; however, such costs would be eligible federal program expenses covered by program administrative funds.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because any such costs related to this rule discussed above will be paid for with federal funds.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from November 23, 2018, to December 27, 2018, to receive input on the proposed section. Public comment and reasoned response are provided below. Public comment was received from five commenters: Executive Committee of the Texas Association of Community Action Agencies (#1), Project Bravo (#2), Community Action Committee of Victoria, Texas (#3), Hill Country Community Action (#4), and Greater East Texas Community Action Program (#5).

Section 1.410--General Comment Regarding Conflict Between Rules (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 note that this rule conflicts with recently adopted 10 TAC Chapter 6, Subchapter C (§6.303) and Subchapter D (§6.406) which requires only public organizations to verify Alien Status. The commenters state that PRWORA is clear that nonprofit organizations are exempt from verifying legal status. Commenters 1 and 3 request that the Department clarify in writing if the PRWORA exemption of nonprofit organizations is acceptable to the Department. Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: Staff disagrees that such a conflict exists. 10 TAC §6.303(f) and 10 TAC §6.406(e) both state that: "A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status of all household members using SAVE." The rule does not state that "only" public organizations will do such verification, but is silent on whether and how those entities that are not public organizations would go about making sure that CEAP funds are not spent on unqualified Aliens. The new rule proposed herein at §1.410 provides added specificity to that silence. While the commenter accurately states that PRWORA does allow nonprofit organizations to be exempt from verifying legal status, neither PRWORA nor HHS have provided how to reconcile this exemption within the LIHEAP program. It should

be noted that the Department's rule does not *require* that nonprofit organizations do such verifications, but provides nonprofits that operate the LIHEAP program with a mechanism by which they can continue to operate the program if they so choose. A nonprofit that does not want to perform such verifications can choose not to do so, in which case the Department will be obligated by its contract with HHS to identify an alternate provider. As requested by the Commenters, in asking the Department to clarify in writing if the PRWORA exemption of nonprofit organizations is acceptable to the Department, the Department again notes that this rule at §1.410 does not *require* a nonprofit to perform the verifications, but provides for several options. If a nonprofit that operates a LIHEAP activity *chooses* to continue to operate the program, they must allow for the ability for the required verifications to occur. No change to the rule is recommended.

Section 1.410(c)(2)--Applicability of Federal Funds (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 note that this section is confusing and seems to conflict with itself by saying that the requirements of this section are applicable to subrecipients of federal funds even if certain exemptions under PRWORA may exist. Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: Staff agrees that this has been worded in a confusing way. Staff suggests the revisions below.

"(2) The requirements of this section are applicable to Subrecipients of federal funds passed through the Department for which the federal program has made a determination that the activity performed by the Subrecipient requires compliance with PRWORA. *However,* [even if] certain exemptions under PRWORA may exist *on a case specific, or activity specific basis* as further *described* [provided] in this rule."

Section 1.410(e)--No Applicable Exemptions Under PRWORA (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 note that this section is confusing and in conflict as it states that if no exemptions under PRWORA are applicable then the Subrecipient must verify legal status using SAVE. Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: Staff addresses this issue in both Comment 1 and 2 above. No change to the rule is recommended.

Section 1.410(f)(1)--Exemptions Under PRWORA (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 note that this section is confusing and in conflict as it states that a Subrecipient that is a Nonprofit Charitable Organization is not required to verify legal status. Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: Staff addresses this issue in Comment 1 above. As noted, the rule does not require such verification, but provides a mechanism by which Nonprofit Charitable Organizations have an option to perform or provide for such verifications if they would like to continue to operate the LIHEAP and WAP programs. No change to the rule is recommended.

Section 1.410(f)(2)(A)--Verification Election (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 note that this clause of the rule indicates that it is subject to affirmation by HHS, and suggest that the rules should not be adopted until such affirmation is received. Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: Staff disagrees with the comment. Subparagraph (A) is one of three options that a Subrecipient may select. At this time the Department has not received a response from HHS, and it is quite possible that it will not. To address this comment, staff could recommend the removal of option (A) from the rule entirely since no response has been received from HHS. However, removal of the option may preclude an acceptable option being available to Subrecipients should HHS ever make such a determination. If this subparagraph is removed and HHS were to make such a determination, the ability for any Subrecipient to use this option would not be able to occur until a new rulemaking process was implemented. By leaving this section as drafted, it keeps the most options open to Subrecipients. No change to the rule is recommended.

Section 1.410(f)(2)(A)(i)--Method of Transmittal and Secure Safekeeping (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 asked that the Department clarify what it means to "provide and maintain a sufficient method of electronic transmittal system." Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: This section relates to if a Subrecipient has opted to gather information from households and transmit that information to the Department, or a third party of the Department, for verification. The requirement to "provide and maintain a sufficient method of electronic transmittal system" merely means that the Subrecipient must have some method by which they can send that documentation securely. This may be as encrypted emails, a document transfer site/protocol, or other means that comply with all applicable federal and state statutes and rules. The Department is not intending to limit the means by which a subrecipient may choose to implement this as long as it is compliant with federal and state statutes and rules. No change to the rule is recommended.

Section 1.410(f)(2)(B)--Voluntary Election to Perform Verifications (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 request that the Department expedite its release of password authorization to the nonprofit subrecipients who are electing to use SAVE. Commenter 2 also indicated that the SAVE manuals provided by Homeland Security clearly state that there are severe penalties for errors that can occur if staff mishandles sensitive documents; the commenter feels that the Department is putting agencies at risk by insisting on the implementation of the new rules without adequate training or access to resources. Commenter 5 indicated their full readiness to perform SAVE verifications and that their staff has completed training. However they did ask that if access to SAVE is not granted, that the Department hire temporary staff to assist with the process; they felt that this would ensure customer assistance is uninterrupted as a short-term solution.

Commenters 1 and 3 request that the Department more clearly indicate when the requirement to verify legal status becomes effective (January 1, 2019 or January 1, 2020). Commenter 2 wanted to emphasize the importance that they place on having knowledge of when the new rules will become effective. Commenters 1 and 3 also asked that in the absence of a SAVE password, nonprofit organizations be authorized to allow clients to

self-declare legal status which is an allowable activity under the current LIHEAP Plan. Lastly, Commenters 1 and 3 ask that the Department inform Subrecipients of the effective date that the Compliance Division will monitor for SAVE requirements. Commenter 2 specifically asks that compliance with this rule have a specific effective date that occurs after SAVE passwords have been made available or after subrecipients receive adequate training on how to verify legal status manually. Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: The Department has requested a revised Memorandum of Agreement (MOA) with the Department of Homeland Security (DHS) to authorize subrecipients to be set up in SAVE and passwords issued. As soon as that MOA is executed, passwords will be made available. Extensive resources relating to SAVE and verifying eligibility exist on the DHS website. The Department's website also provides information and links on this information. If in fact, the Department does not receive a revised MOA or DHS denies such an MOA revision, the Department is prepared to hire staff temporarily to assist with the process on a short-term basis.

Because the requirement to verify legal status is a federal requirement, made applicable by HHS' interpretation of PRWORA, the Department does not have the authority to state that the requirement to verify legal status is not yet effective. However, as it relates to the Department's rulemaking and the applicability of the state options and their implementation, this rule will take effect in practice only for those Private Nonprofit Organizations contracts executed or amended *after* the rule is formally adopted. 2019 contracts have already been executed for LIHEAP contracts and, this rule was not in effect at that time, therefore, this means that if a 2019 LIHEAP contract was already signed, and is not amended, this portion of the rule will become effective for a Subrecipient's 2020 LIHEAP contracts, effective January 1, 2020. Password availability and/or adequate training as requested, will take place prior to that effective date. However, for a Subrecipient who has not yet signed a LIHEAP or WAP contract, if a contract for LIHEAP or WAP is signed after the effective date of the rule, the rule will be in effect at that time. Use of the SAVE system was already a contractual requirement for Public Organizations as part of the 2019 (and earlier) contracts. No change to the rule is recommended.

As it relates to the comment regarding self-declaration by clients as to their legal status, HHS has indicated to the Department, and the Department has relayed to Subrecipients, that this is not an acceptable form of verification and that if self-declaration is used, and a household is later identified as being ineligible, those costs would be disallowed and its repayment would be a fiscal responsibility of the Subrecipient (and the Department). The Department does not authorize self-declaration. On January 9, 2019, the Department submitted a plan amendment to HHS to clarify the incorrectly selected checkbox in the LIHEAP State Plan that indicated self-declaration was acceptable.

As it relates to notifying Subrecipients of the effective date that the Compliance Division will monitor for SAVE requirements for Private Nonprofit Organizations, the Compliance Division will monitor based on each contract, and elections that may have been made under this rule. If a Subrecipient that is a Private Nonprofit Organization had already signed its 2019 contract prior to the rule effective date, and has not had a Contract Amendment that adds additional funds or extending the Contract Term for purposes of fund expenditure, their first Contract having this requirement would be the 2020 contract; therefore, in that circumstance monitoring for this issue may occur any time after the effective date of that 2020 contract. As stated above Public Organizations, were already required to use the SAVE system in 2019 (and earlier contracts).

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

§1.410. Determination of Alien Status for Program Beneficiaries.

(a) Purpose. The purpose of this section is to provide uniform Department guidance on Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1986 (PRWORA), which provides that an alien who is not a Qualified Alien is not eligible for any federal or state public benefit.

(b) Definitions. The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program under which program eligibility is seeking to be determined, or assigned by federal or state law.

(1) Nonprofit Charitable Organization--An entity that is organized and operated for purposes other than making gains or profits for the organization, its members or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders; and is organized and operated for charitable purposes.

(2) Public Organization--An entity that is a Unit of Government or an organization established by a Unit of Government.

(3) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b).

(4) State--The State of Texas or the Department, as indicated by context.

(5) Subrecipient--An entity that receives federal or state funds passed through the Department.

(6) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of program applicants.

(c) Applicability for Federal Funds.

(1) The determination of whether a federal program, or activity type under a federal program, is a federal public benefit for purposes of PRWORA is made by the federal agency with administration of a program or activity, not by the Department. Only in cases in which the federal agency has given clear interpretation that it requires PRWORA to be applicable to a program or activity will this rule be applied by the Department.

(2) The requirements of this section are applicable to Subrecipients of federal funds passed through the Department for which the federal program has made a determination that the activity performed by the Subrecipient requires compliance with PRWORA. However, certain exemptions under PRWORA may exist on a case specific, or activity specific basis as further described in this rule.

(d) Applicability for State Funds. The Department has determined that State Housing Trust Funds that are provided to a Subrecipient that is a Public Organization to be distributed directly to individuals, are a state public benefit.

(e) No Applicable Exemptions under PRWORA. If no exemptions under PRWORA are applicable to the Subrecipient or to the activity type, as further detailed in this section, then the Subrecipient must verify U.S. Citizen, U.S. National, or Qualified Alien status ("legal status") using SAVE and evaluate eligibility using the rules for the applicable program under this Title.

(f) Exemptions Under PRWORA.

(1) In accordance with 8 U.S.C. §1642(d), a Subrecipient that is a Nonprofit Charitable Organization receiving funds from the Department for which the federal program or activity requirement is that a household be verified for eligibility status, is not required to verify that an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(2) For activities in the Low Income Housing Energy Assistance Program and the Department of Energy Weatherization Program performed by a Nonprofit Charitable Organization (identified as a Private Nonprofit Organization in the Subrecipient's Contract with the Department), where the Department must ensure that an individual is a U.S. Citizen, U.S. National, or Qualified Alien, a Subrecipient must ensure compliance with the verification requirement through electing to proceed under subparagraph (A), (B), or (C) of this paragraph. Subrecipients will submit in writing to the Director of Community Affairs or his/her designee no later than six months prior to the beginning of a Contract Term its election under one of the subparagraphs in this subsection. If no such election is made by the deadline, the Subrecipient will no longer be eligible to perform as a Subrecipient in the program as further provided for in paragraph (3) of this subsection. Failure by the Subrecipient to select an option by the deadline is good cause for nonrenewal of a Contract.

(A) Subject to affirmation by U.S. Health and Human Services, the Subrecipient may voluntarily elect to request from the household and transmit to the Department, or a party contracted by the Department, sufficient information or documentation so that the Department is able to ensure an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(i) The Nonprofit Charitable Organization must provide and maintain a sufficient method of electronic transmittal system that allows for such information to be provided to the Department or its contractor, and ensures the secure safekeeping of such paper and/or electronic files, and receipt of subsequent response back from the Department or its contracted party.

(ii) Upon receipt of the results of the verification performed by the Department, or its contracted party, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.

(B) The Subrecipient may voluntarily elect to perform verifications through the SAVE system, as authorized through the Department's access to such system.

(C) The Subrecipient may voluntarily elect to procure an eligible qualified organization to perform such verifications on their behalf, subject to Department approval.

(i) The Nonprofit Charitable Organization and/or its procured provider must maintain sufficient evidence and documentation that verification has taken place so that such verification can be confirmed by the Department, and must ensure the secure safekeeping of such paper and/or electronic files.

(ii) Upon receipt of the results of the verification performed by the procured provider, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.

(D) If no election is made by the deadline in paragraph (2) of this subsection, the Subrecipient will be provided notification under Tex. Gov't Code Chapter 2105 that the Department does not intend to renew the Contract with the Subrecipient at the end of the current Contract Term. The Subrecipient may have a right to request a hearing under Tex. Gov't Code Chapter 2105.

(3) Other activities that do not require verification by Public Organizations or Nonprofit Charitable Organizations are described in the August 5, 2016, HUD, HHS, and DOJ Joint Letter Regarding Immigrant Access to Housing and Services.

(g) The Department may further describe a Subrecipient's responsibilities under PRWORA, including but not limited to use of the SAVE system, in its Contract with the Subrecipient. Nothing in this rule shall be construed to be a waiver, ratification, or acceptance of noncompliant administration of a program prior to the rule becoming effective.

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 25, 2019.

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David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-1762

10 TAC §1.411

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, new 10 TAC Chapter 1, Administration, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.411, Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7615). The purpose of the new section is to provide compliance with Tex. Gov't Code Chapter 2105, which governs the administration of federal block grants, and provide one uniform rule that provides Subrecipients and Administrators under the Community Services Block Grant (CSBG) program, the Low Income Home Energy Assistance Program (LIHEAP) and the Community Development Block Grant (CDBG) Program, which funds the Colonia Self-Help Centers, with clear rule-based guidance relating to Chapter 2105.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under item (9) of that section: ensuring Department compliance with legislation. It should be noted, however, that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. David Cervantes, Acting Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but provides guidance for how the Department and its subrecipients of certain federal funds, will comply with Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.

2. The new rule does not reduce work load such that any existing employee positions can be eliminated nor does it create work that require new employee positions.

3. The new rule does not require additional future legislative appropriations.

4. The new rule does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is creating a new regulation, but only to the extent that it provides clear guidance to Subrecipient on adherence to Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.

6. The new rule will not expand or repeal an existing regulation.

7. The new rule will neither increase nor decrease the number of individuals subject to the rule, as Administrators and Subrecipients are already subject to the provisions of Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.

8. The new rule will not negatively nor positively affect this state's economy.

ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code Chapter 2306, Subchapter E.

The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.

The Department has determined that because this rule is only applicable to nonprofits and local governments that are already subject to Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants, there will be no economic effect on small or micro-business or rural communities.

TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule merely provides guidance on how subrecipients and administrators will be subject to Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants, and that the rule is applied statewide, the rule does not change issues affecting employment, and there are no "probable" effects of the new rule on particular geographic regions.

PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be clear guidance provided to Subrecipients and Administrators on compliance with Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.

FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from November 23, 2018, to December 27, 2018, to receive input on the proposed section. Public comment and reasoned response are provided below. Public comment was received from five commenters: Executive Committee of the Texas Association of Community Action Agencies (#1), Project Bravo (#2), Community Action Committee of Victoria, Texas (#3), Hill Country Community Action (#4), and Greater East Texas Community Action Program (#5).

§1.411(d) - Complaints (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 ask that complaints received concerning a Subrecipient needs to be defined including the methodology used for classifying or categorizing a complaint. More specifically, they asked whether the rule will apply to any complaint whether substantiated or not? If a complaint turns out to be simply a disgruntled client but evidence proves the Subrecipient did the right thing will it still count against the Subrecipient? Finally they commented that there used to be a TAC rule in which if the denial of a client was based on income eligibility at the time of application and it was verified by another staff person at the local agency the appeals process was denied, and asked whether that rule still existed? Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: This section of the proposed rule addresses two statements. The first states that: "The Department will notify a Subrecipient of any complaint received concerning the Subrecipient services." This mirrors a direct requirement from Tex. Gov't Code §2105.103(a) that states: "An agency shall inform a provider of any complaint received concerning the provider's services." Therefore, Subrecipients will be notified of all complaints, whether substantiated or not.

The second clause of the proposed rule states: "As authorized by Tex. Gov't Code §2105.104, the Department shall consider the history of complaints regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Sub-

recipient." Neither this language, nor its supporting statute at §2105.104, indicate that *all* complaints must be the basis for making such determinations. Staff agrees that clarifying this issue in the rule can provide assurance to Subrecipients that certain types of complaints will not negatively affect their contract determinations.

The Commenters asked that the methodology used for classifying and categorizing complaints be provided. Neither the rule, nor the statute, contemplate further classifying or categorizing complaints; staff does not feel that such further specificity is needed in maintaining and providing complaints to Subrecipients. If it is contemplated that a history of complaints would become a basis for adjusting a contract under this rule, the Subrecipient will be so notified. However, in order to provide further clarity, and to provide consistency with 10 TAC §1.302, the Department has specified in this rule that complaints will be looked at for the preceding three year period.

As it relates to the last comment asking whether a rule still exists relating to client denials for the purpose of income determination, the answer for CSBG and LIHEAP (the programs administered by the commenters) is that a rule still exists. In 10 TAC §6.8(b)(8), the Department rules states: "(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) - (7) of this subsection do not apply, and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing." That rule does not directly affect or alter the rule proposed at 10 TAC §1.411(d).

Suggested language revision is provided:

"As authorized by Tex. Gov't Code §2105.104, the Department shall consider the history of complaints*, for the preceding three years,* regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Subrecipient. *The Department will not consider complaints in determining whether to award, increase, or renew a Contract with a Subrecipient that the Department has determined in accordance with 10 TAC §1.2 (relating to Department Complaint System to the Department) it has no authority to resolve, or that are not corroborated."*

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

§1.411. Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code.

(a) Purpose. The purpose of this rule is to inform compliance with Tex. Gov't Code Ch. 2105, Administration of Block Grants.

(b) Applicability. This rule applies to all funds administered by the Department that are subject to Tex. Gov't Code Ch. 2105. The activities administered by the Department that are currently subject to Tex. Gov't Code Chapter 2105 are those funded by the Community Services Block Grant (CSBG) funds that are required to be distributed to Eligible Entities, the Low Income Home Energy Assistance Program (LIHEAP) funds that are distributed to Subrecipients, and the funds that the Department administers and distributes to Subrecipients from the annual allocation from the Community Development Block Grant (CDBG) Program. If additional block grant funds that would be subject to Tex. Gov't Code Ch. 2105 by its terms are assigned to the Department, they too would be subject to this rule. Capitalized terms used in this section are defined in the applicable Rules or chapters of this title or as assigned by federal or state law.

(c) Hearings required to be held by Subrecipients. Consistent with Tex. Gov't Code §2105.058, Subrecipients that receive more than $5,000 from one or more of the programs noted in subsection (b) of this section must annually submit evidence to the Department that a public meeting or hearing was held solely to seek public comment on the needs or uses of block grant funds received by the Subrecipient. This meeting or hearing may be held in conjunction with another meeting or hearing if the meeting or hearing is clearly noted as being for the consideration of the applicable block grant funds under this subsection.

(d) Complaints. The Department will notify a Subrecipient of any complaint received concerning the Subrecipient services. As authorized by Tex. Gov't Code §2105.104, the Department shall consider the history of complaints, for the preceding three year period, regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Subrecipient. The Department will not consider complaints in determining whether to award, increase, or renew a Contract with a Subrecipient that the Department has determined in accordance with 10 TAC §1.2 (relating to Department Complaint System to the Department) it has no authority to resolve, or that are not corroborated.

(e) Right to Request a Hearing on Denial of Services or Benefits. As provided for in Tex. Gov't Code §2105.151 and §2105.154, an affected person who alleges that a Subrecipient has denied all or part of a service or benefit funded by funds under a program that is subject to this subchapter in a manner that is unjust, discriminatory, or without reasonable basis in law or fact may request and have a timely hearing provided by the Department in the Service Area of the Subrecipient, and the requested hearing will be an administrative hearing under Tex. Gov't Code Ch. 2001.

(f) Nonrenewal or Reduction of Block Grant Funds to a Specific Subrecipient.

(1) As required by Tex. Gov't Code §2105.202(a), this section defines "good cause" for nonrenewal of a Subrecipient contract or a reduction of funding. Good cause may include any one or more of the following:

(A) Consistent and repeated corroborated complaints about a Subrecipient's failure to follow substantive program requirements, as provided for in subsection (d) of this section;

(B) Lack of compliance with 10 TAC §1.403 (relating to Single Audit Requirements);

(C) Statute, rule, or contract violations that have not been timely corrected and have prompted the Department to initiate proceedings under 10 TAC Chapter 2, (relating to Enforcement), and have resulted in a final order confirming such violation(s);

(D) Disallowed costs in excess of $10,000 that have not been timely repaid;

(E) Failure by Subrecipient to select an option as provided for in §1.410 of this title (relating to Determination of Alien Status for Program Beneficiaries) by the deadline;

(F) The ineffective rendition of services to clients, which may include a Subrecipient's failure to perform on a Contract, and which may include materially failing to expend funds;

(G) A failure to address an identified material lack of cost efficiency of programs;

(H) A material failure of the services of the Subrecipient to meet the needs of groups or classes of individuals who are poor or underprivileged or have a disability;

(I) Providing services that are adequately addressed by other programs in that area;

(J) The extent to which clients and program recipients are involved in the Subrecipient's decision making;

(K) Providing services in a manner that unlawfully discriminates on the basis of protected class status; or

(L) Providing services outside of the designated geographic scope of the Subrecipient.

(2) Notification of Reduction, Termination, or Nonrenewal of a Contract and Opportunity for a Hearing. As required by Tex. Gov't Code §2105.203 and §2105.301, the Department will send a Subrecipient a written statement specifying the reason for the reduction, termination, or nonrenewal of funds no later than the 30th day before the date on which block grant funds are to be reduced, terminated, or not renewed, unless excepted for by paragraph (4) of this subsection. After receipt of such notice for reduction or nonrenewal, a Subrecipient may request an administrative hearing under Tex. Gov't Code Ch. 2001 if the Subrecipient is alleging that the reduction is not based on good cause as identified in subsection (f)(1) of this section or is without reasonable basis in fact or law. If a Subrecipient requests a hearing, the Department may, at its election, enter into an interim contract with either the Subrecipient or another provider for the services formerly provided by the provider while administrative or judicial proceedings are pending.

(3) Notification of Reduction of Block Grant funds for a Geographical Area. If required by Tex. Gov't Code §2105.251 and §2105.252, the Department will send a Subrecipient a written statement specifying the reason for the reduction of funds no later than the 30th day before the date on which block grant funds are to be reduced.

(4) Exceptions. As authorized by Tex. Gov't Code §2105.201(b), the notification and hearing requirements for reduction or nonrenewal of funding provided for in paragraphs (2) and (3) of this subsection do not apply if a Subrecipient's block grant funding becomes subject to the Department's competitive bidding rules. The Department will require such competitive bidding for awarding block grant funding subject to Tex. Gov't Code Ch. 2105 for Subrecipients and in the Department's procuring of Subrecipients or contractors to administer or assist in administering such block grant funds, which includes the competitive release of Notices of Funding Availability and competitive Requests for Subrecipients or Providers. The criteria for evaluation of competitive responses shall be set forth in the applicable notices of funds availability, requests, or other procurement invitation document.

(5) Nothing in this section supersedes or is intended to conflict with the rights and responsibilities outlined in §2.203 of this title (relating to Termination and Reduction of Funding for CSBG Eligible Entities).

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

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CHAPTER 5. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

10 TAC §5.801

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative without changes as proposed in the November 23, 2018, *Texas Register* (43 TexReg 7617) and will not be republished. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. David Cervantes, Acting Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the Project Access Program.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Project Access program.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate

nor authorize a taking by the Department, therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from November 23, 2018, to December 27, 2018, to receive input on the repealed section. No public comment was received on the repeal.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed section affects no other code, article, or statute.

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

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For further information, please call: (512) 475-1762

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10 TAC §5.801

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative, as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7618). The purpose of the new section is to make changes that bring the rule up to date, streamline language, provide for one definition of disability for consistency and equity in handling client eligibility, and to specify the unique federal criteria required of two funding sources within the program - Mainstream Voucher Program vouchers and Non-Elderly Disabled Vouchers.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted because no exceptions apply, however, it should be noted that no costs are associated with this action that would prompt a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. David Cervantes, Acting Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rule that governs the Project Access program.

2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule does not increase nor decrease the number of individuals to whom this rule applies.

8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures in place for the Project Access Program which provides Section 8 Housing Choice Vouchers for persons with disabilities exiting institutions so that they can live in community-based settings. The Program assists individuals directly; therefore, no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a program rule that applies only to the recipients of the voucher, and the rule changes primarily make minor edits and add consideration for how the Mainstream Voucher Program will incorporate into the Project Access program, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect, the new rule has no economic effect on local employment because this rule relates only to individuals who may receive a voucher; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." The Project Access program is authorized to issue vouchers anywhere in the state, and where a tenant will elect to locate is unknown during rule-making, so there are no identifiable "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new rule will be a clearer rule for recipients and assurance of the program having compliant regulations that reflect how the Mainstream Voucher Program is addressed within the Project Access program. There will be no economic cost to any individuals required to comply with the new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from November 23, 2018, through December 27, 2018, to receive input on the proposed rule. No public comment was received. However, minor grammatical and syntactical revisions to the rule have been made.

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the new section affects no other code, article, or statute.

§5.801. Project Access Initiative.

(a) Purpose. The Project Access Program (PA Program) is a program that utilizes federal Section 8 Housing Choice Vouchers, Non Elderly Disabled Vouchers, and Mainstream Vouchers administered by the Texas Department of Housing and Community Affairs (the Department) to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing. This rule provides the parameters and eligibility standards for this program.

(b) Definitions.

(1) At-Risk Applicant--A household that applies to the Department's Section 8 program that was a prior resident of an Institution.

(2) HUD--The U.S. Department of Housing and Urban Development.

(3) Institution--Congregate settings populated exclusively or primarily with individuals with disabilities; congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living; or settings that provide for daytime activities primarily with other individuals with disabilities. This definition includes but is not limited to a nursing facility, state psychiatric hospital, intermediate care facility, or board and care facility as defined by HUD. The definition for Institution is further limited for vouchers funded with NED as further provided for in subsection (e)(2)(C) of this section. This definition does not include a prison, jail, halfway house, or other setting that persons reside in as part of a criminal proceeding.

(4) Mainstream Vouchers (MVP) --HUD's Mainstream Voucher Program.

(5) Non Elderly Disabled (NED)--HUD's Non Elderly Disabled Program.

(6) Section 8--HUD's Section 8 Housing Choice Voucher Program administered by the Department.

(c) Regulations Governing Program. All Section 8 Program rules and regulations, including but not limited to, criterion at 24 CFR Part 982 apply to the program.

(d) Project Access in the Department's PHA Plan. Project Access households have a preference in the Department's Section 8 Program, as designated in the Department's Annual PHA Plan. The total number of Project Access Vouchers will be determined each year in the Department's PHA Plan.

(e) Eligibility for the Project Access Program.

(1) A household that participates in the Project Access Program must meet all Section 8 eligibility criteria, and one member of the household must meet all of the eligibility criteria in subparagraphs (A) and (B) of this paragraph.

(A) Must have a disability as defined in 24 CFR §5.403; and

(B) Must meet one of the criteria in clauses (i) or (ii) of this subparagraph:

(i) an At-Risk Applicant that meets the criteria of subclause (I) or (II) of this clause:

(I) A current recipient of Tenant-Based Rental Assistance (TBRA) from a HOME Investment Partnership Program and within six months prior to expiration of that TBRA assistance; or

(II) A household with a household member who meets the criteria of an At-Risk Applicant and has lost their TBRA from a HOME Investment Partnership Program due to lack of available funding.

(ii) be a resident of an Institution at the time of voucher issuance.

(2) NED and Mainstream Vouchers have these additional eligibility criteria which are:

(A) The household member with the disability as defined in 24 CFR §5.403, must be 18 but under 62 years of age at the time of voucher issuance;

(B) For NED only, the head of household, spouse, co-head, or sole member, must be a person with a disability; and

(C) For NED only, the qualifying household member must not be an At-Risk Applicant as described in this subsection, must be residing in a nursing facility, Texas state psychiatric hospital, or intermediate care facility immediately prior to voucher issuance, and must also be referred by the applicable Health and Human Services Commission (HHSC) funded agency.

(f) Waiting List and Allocation of Vouchers.

(1) Unless no longer authorized as a set-aside by HUD, no more than 10 percent of the vouchers used in the Project Access Program will be reserved for households with a household member eligible for a pilot program in partnership with the HHSC for Texas state psychiatric hospitals who otherwise meets the criteria of the Project Access Program at the time of voucher issuance.

(2) The Department's Waiting List for PA vouchers will be kept "open" and the Department will accept an application for the PA Program at any time. An applicant for the PA Program is placed on a Waiting List until a voucher becomes available. An applicant who qualifies for the Project Access HHSC Pilot Program in subsection (f)(1) of this section is placed on a Waiting List for Project Access HHSC Pilot Program, and also for the general PA Program Waiting List.

(3) The Department will select applicants off the Waiting List for the Project Access HHSC Pilot Program, and for the general PA Program waitlist to ensure that the Department is utilizing all NED and Mainstream Vouchers before issuing other Section 8 Vouchers.

(4) Maintaining Status on the Project Access Waiting List. A household on the Project Access waiting list may maintain their order and eligibility for a Project Access voucher if the household:

(A) Applied for the PA Program and was placed on the waiting list prior to transition out of the institution; and

(B) Received continuous Tenant Based Rental Assistance from a HOME Investment Partnership Program or other Department funding for rental assistance from the time of exit from the institution until the issuance of the Project Access voucher.

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

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

13 TAC §§3.1 - 3.3

The Texas State Library and Archives Commission (Commission) adopts amendments to 13 Texas Administrative Code (TAC) §3.1 - 3.3, State Publications Depository Program. The Commission adopts the amendments with changes to the proposed text as published in the *Texas Register* on November 9, 2018, (43 TexReg 7424). The rules will be republished.

The amendments as adopted provide for the increasing prevalence of state publications in electronic and digitized format, including:

--Rule §3.1, amends the definitions relating to materials in digital and electronic format, including provision for born-digital materials.

--Rule §3.2, amends terminology and references.

--Rule §3.3, amends outdated hardware for submission of electronic publications, includes state agency website requirements for the Texas Records and Information Locator (formally outlined in rule §3.4), and includes provisions for the transmittal of digital state publications to the Texas Digital Archive.

--In a separate posting, repeal §3.4 as a standalone rule and incorporates into rule §3.3 amendments.

Reasoned Justification under Texas Government Code Section 2001.033(B). The amendments are adopted for the following purposes:

--Rule §3.1 is adopted to clarify definitions of digital and electronic state publications.

--Rule §3.2 is adopted to simplify terminology and references, as it relates to the State Publications Depository Program.

--Rule §3.3 is adopted to receive state publication submissions in electronic and digital format.

No comments were received regarding the adoption of the amendment.

The amendments are proposed under Texas Government Code, §441.101 - .106.

§3.1. Definitions.

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

(1) Born digital publication--A state publication that originates in electronic format.

(2) Commission--The Texas State Library and Archives Commission.

(3) Complex relational database--A database comprised of multiple inter-related tables that is dynamically updated, that contains only minimal narrative text, and that cannot be accurately represented as a set of static HTML pages or a spreadsheet.

(4) Depository library--Any library that the Director and Librarian or the commission designates as a depository library for state publications.

(5) Depository publication--A state publication in any format distributed from or on behalf of the Texas State Library and Archives Commission to a depository library.

(6) Director and Librarian--Chief executive and administrative officer of the Texas State Library and Archives Commission.

(7) Electronic external storage devices--Removable electronic media used to store and transfer electronic information.

(8) Electronic format--A form of recorded information that can be processed by a computer.

(9) Internet connection--A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to the standard proto-

cols listed in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.

(10) Internet publication--A publication that is published on the Internet as a file or files accessible by Internet connection.

(11) On-line--Accessible via a computer or terminal, rather than on paper or other medium.

(12) Physical format--A tangible system for the compilation and presentation of information, including print publications and electronic external storage devices as defined in this chapter.

(13) Print publication--A publication:

(A) that is published in a format that is accessible without the use of a computer, including information published on paper, in microformat, on audio tapes, vinyl discs or audio compact discs, on videotape or film, or on any other media that are not specifically cited in this definition; and

(B) that is not an Internet publication as defined in this section.

(14) Publicly distributed--Provided to persons outside of the agency, in print or other physical medium, or by an Internet connection, or from a limited local area network on agency premises, or at another location on behalf of the agency. Information that is made accessible only through an authentication process, such as a user name and password, or upon request via open records laws, is not deemed publicly distributed.

(15) Report--A report:

(A) that is not confidential, prepared by a state agency in any format and is required by statute, rule, or rider in the General Appropriations Act to be submitted to: the governor, a member, agency, or committee of the legislature, another state agency, and is publicly distributed; and

(B) that is prepared by a state agency in electronic, Internet or online format and is determined appropriate for submission through the Texas Digital Archive by Director and Librarian

(16) Serial--Issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. The term includes, but is not limited to: periodicals, newspapers, reports, yearbooks, journals, minutes, proceedings, transactions.

(17) Site map--An HTML page providing links to all materials available to the public on a Web site. A site map can provide links to sections or categories within a Web site rather than to each individual document if all documents within each section are inter-linked.

(18) State agency--Any entity established or authorized by law to govern operations of the state such as a state office, department, division, bureau, board, commission, legislative committee, authority, institution, regional planning council, university system, institution of higher education as defined by Texas Education Code, §61.003, or a subdivision of one of those entities.

(19) State publication--Information in any format that is produced by the authority of or at the total or partial expense of a state agency or is required to be distributed under law by the agency and is publicly distributed by or for the agency. The term does not include information the distribution of which is limited to contractors with or grantees of the agency, persons within the agency or within other government agencies, or members of the public under a request made under the open records law, Government Code, Chapter 552 if it does not otherwise meet the definition of a state publication.

(20) State Publications Depository Program--A program of the Texas State Library and Archives Commission designed to collect, preserve, and distribute state publications, and promote their use by the citizens of Texas and the United States.

(21) Substantive change--A modification of a state publication in any format that represents a fundamental alteration in the information content of a publication. Examples of a substantive change include but are not limited to:

(A) changes to publicly distributed agency information based on the installation of new leadership in a state agency;

(B) amendments to agency policies (such as reversals of former policies; expansions of authority via statutory means, rule-making authority, or judicial process; or clarifications of existing policies);

(C) provision of new information, such as information reports; and

(D) revisions to previously issued information, such as documents describing the financial status, providing statistical data, or reporting on matters within the agency's area of authority.

(22) Texas Digital Archive--The digital repository maintained and operated by the Texas State Library and Archives Commission for the preservation of and access to permanently valuable copies of archival state records, reports and publications.

(23) Texas Records and Information Locator (TRAIL)--A program of the Texas State Library and Archives Commission designed to locate, index, and make available state publications in electronic format.

(24) Texas State Library and Archives Commission--The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the commission's responsibilities.

(25) Transitory or inconsequential change--A modification of a state publication in any format that represents a minor alteration of the publication and does not alter the essential content of the original publication. A transitory or inconsequential change includes but is not limited to: correction of misspellings or typographical errors and the alteration of an Internet publication due to the expiration of textual information that is linked to time-dependent publications (such as press releases or announcements regarding the activities of an agency's programs).

(26) Uniform Resource Locators--The syntax and semantics of formalized information for location and access of resources on the Internet, as specified in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.

(27) Website-- A state website maintained by or for a Texas state agency, including an institution of higher education, intended to provide access to state government information, including electronic format state publications. State agency websites, excluding institutions of higher education, are web harvested by the TRAIL service.

§3.2. Standard Requirements for State Publications in All Formats.

(a) State agencies are required to deposit or make accessible copies of all state publications that have not been exempted from the State Publications Depository Program in §3.6 of this title (relating to Special Exemptions) or under §3.7 of this title (relating to State Publications Contact Person).

(b) State agencies are required to display the date that each state publication is produced or distributed in a visible location at or near the beginning of the publication.

(c) When a state publication is distributed to the public in multiple formats, state agencies are required to provide access to or copies of that publication to the commission in all formats in which the publication is publicly distributed. State agencies are not required to provide copies to the commission of publications on electronic external storage devices if the state publications are made available by an Internet connection.

(d) When a state publication changes frequently, as in the case of an Internet publication that announces time-dependent information, state agencies are required to determine whether the alteration in the publication represents a substantive change or a transitory or inconsequential change. If the modification is a substantive change, the original version and the new version must be treated as separate publications and managed in accordance with §3.3 of this chapter (relating to Standard Deposit and Reporting Requirements for State Publications in All Formats). If the modification is a transitory or inconsequential change, or if the modification is due only to changes to information that is exempt under §3.6 of this chapter (relating to Special Exemptions), the two versions are not deemed to be separate publications.

(e) Records retention. State agencies are reminded that compliance with this chapter does not constitute compliance with records retention rules for state government records. See Texas State Records Retention Schedule (second edition or subsequent edition as applicable) and §§6.1 - 6.10 of this title for complete information about records retention requirements.

(f) Archival publications. For those publications defined as archival (see §6.1 of this title), one copy must be submitted to the Texas State Archives in accordance with §§6.91 - 6.99 of this title.

§3.3. Standard Deposit and Reporting Requirements for State Publications in All Formats.

(a) The standard number of copies of state publications in physical formats to be deposited is based on the number of copies produced, the type of publication or the medium in which it is made available.

(1) For most state publications in physical formats, four (4) copies must be deposited with the State Publications Depository Program.

(2) Three (3) copies of the following state publications must be deposited with the State Publications Depository Program:

(A) Annual financial reports;

(B) Annual operating budgets; and

(C) State or strategic plans (for agency services, programs within its jurisdiction).

(3) Two (2) copies of the following state publications must be deposited with the State Publications Depository Program:

(A) Requests for legislative appropriations; and

(B) Quarterly and annual reports of measures.

(b) For state publications available in electronic format but not by an Internet connection:

(1) State agencies must deposit electronic state publications on electronic external storage devices that are approved by the Director and Librarian and adhere to standards set by the Texas State Library and Archives Commission only when they are not accessible to the public by Internet connection. One (1) copy of all applicable state publications may be submitted.

(2) State agencies must meet the following requirements when submitting state publications on electronic external storage devices:

(A) Compact Disks--Read-Only Memory. One (1) copy of all applicable state publications must be submitted on disks that adhere to standards of ISO (International Organization of Standards) 9660. Files shall be formatted in ASCII, or other software that is provided and is in the public domain or has been purchased with a license agreement to distribute it with each copy of the disk. If the file is compressed, software and instructions must be included on the disk to decompress all data directly to a hard drive from commands found in a file on the root directory.

(B) State Publications on Other Electronic External Storage Devices. For new or improved media that may become commonly available, one (1) copy of all applicable state publications may be submitted. All such devices or media for submitting state publications must be approved by the Director and Librarian and must adhere to standards set by the Texas State Library and Archives Commission.

(c) For state publications available both in physical format and by Internet connection, the publishing agency shall prominently display the publication's specific and exact Internet address (the uniform resource locator on the agency's website) on the cover or title page of the publication.

(d) Reporting.

(1) Each state agency must submit a publication reporting form that lists and describes state publications in physical formats as they become available.

(2) At the time that a state publication is submitted in physical format, the publication reporting form must be enclosed with the shipment.

(3) For each state publication that is available both in physical format and by Internet connection, the publication reporting form must include the publication's specific and exact Internet address (the uniform resource locator on the agency's website).

(e) The Texas Records and Information Locator (TRAIL) service provides access to state publications in electronic format that are made available to the public by an Internet connection on a State Agency website. State agency websites are crawled periodically each fiscal year by and are accessible through the TRAIL service. State agencies are not required to submit copies of their state agency website in any format to the depository program if the website is made available by an Internet connection. The following are minimum technical requirements for the web harvesting of state agency electronic format publications and websites through the TRAIL service.

(1) State agencies are required to provide the Texas State Library and Archives Commission with guaranteed access, at no charge, to the agencies' Internet publications. If a "robots.txt" file is used to prevent harvesting of a State Agency website, then that file must include an exception for TSLAC's designated harvesting system;

(2) State agencies must meet the following minimum requirements when providing state publications in electronic format by Internet connection on their website:

(A) Accessibility. State publications made available by an Internet connection on a state agency website shall be accessible:

(i) by anonymous File Transfer Protocol (FTP), Hyper Text Transfer Protocol (HTTP) or other electronic means as defined

in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community; and

(ii) by following a link or series of links from the Agency's primary URL. For publications accessible only by database searching or similar means, an alternative path such as a hidden link to a comprehensive site map must be provided except as exempted in §3.5 of this title; and

(iii) on alternative electronic formats and interfaces consistent with requirements of the Americans with Disabilities Act of 1990 and as amended.

(B) Availability. Each original Internet publication and subsequent versions as described in §3.2(c) of this title (relating to Standard Requirements for Stat Publications in All Formats) must remain available on the agency website for nine months to ensure that the publication has been collected by TSLAC and made available in the TRAIL archive. Agencies can confirm that a version of an Internet publication has been added to the TRAIL archive by searching at www.tsl.texas.gov/trail/index.html.

(3) Each electronic format state publication made available by Internet connection must contain descriptive information about the publication.

(4) For electronic format state publications that are not made available to the public by Internet connection on a state agency website and are required for submission to the State Publications Depository Program, publications may be submitted on approved electronic external storage devices as described in Standard Deposit and Reporting Requirements for State Publications in All Formats (see §3.3(b)(1) of this title).

(5) For certain reports (see §3.1(15)(B)) that are born-digital and determined appropriate for submission through the Texas Digital Archive by Director and Librarian, for submission requirements.

(6) State agencies are advised to review the rules in 1 TAC §206.53 and 206.54 (relating to Linking and Indexing State websites).

(7) TRAIL is a searchable index of state agency Internet publications and is in compliance with the ANSI/NISO (American National Standards Institute/National Information Standards Organization) Z39.50 search and retrieval standard or successor standards, and that shall adhere to the application profile of the Federal Information Processing Standards Publication 192 or its successor document.

(f) The Texas Digital Archive (TDA) provides access to publications of certain reports that are:

(1) first published in electronic format;

(2) submitted electronically in as defined in §3.1(15), concerning Definitions and;

(3) are required to be submitted through the State Publications Depository Program (see §3.2 of this title). Submission under these rules are for certain reports and publications that are prepared and created after this rule takes effect and does not include previously submitted publications in any format.

(g) State agencies are required to provide the Texas State Library and Archives Commission, at no charge, an electronic format of the publication as defined in §3.1(15), concerning Definitions and §3.2(a) concerning Standard Requirements for State Publications in All Formats.

(h) Submissions of other state publications in electronic, Internet or online format will be accepted at the determination of the Director and Librarian.

(i) State agencies must meet all the following minimum requirements when submitting state publications in electronic format. Submissions must include:

(1) an individual electronic file. State publications submitted in electronic format must be a Portable Document File (PDF) or other secure file type; other file types will be accepted at the determination of the Director and Librarian. Submissions cannot be a link or series of links to the state publication.

(2) a publication reporting form. At the time of submission, a publication reporting form must be included. Submissions provided through electronic communications must be from a state agency email address.

(3) descriptive file information. State publications submitted in electronic format must include descriptive information in:

(A) a Title tag;

(B) an Author tag. Author meta tag that includes the official name of the state agency responsible for creating the report;

(C) a Description tag. Description meta tag that includes a narrative description of the publication; and

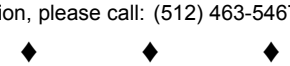
(D) a Keyword or Subject tag. Keyword meta tag that includes selected terms from within the publication.

(j) State agencies should retain a copy of their electronic publication, as submitted to the Texas State Library and Archives Commission, until the publication is posted to the Texas Digital Archive. Agencies can confirm that the electronic publication was accepted and added to the Texas Digital Archive by searching at www.tsl.texas.gov.

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

Filed with the Office of the Secretary of State on February 25, 2019.

TRD-201900670
Jelain Chubb
Director
Texas State Library and Archives Commission
Effective date: March 17, 2019
Proposal publication date: November 9, 2018
For further information, please call: (512) 463-5467



13 TAC §3.4

The Texas State Library and Archives Commission (Commission) adopts the repeal of 13 Texas Administrative Code (TAC) §3.4, Standard Deposit and Reporting Requirements for State Publications that are Internet Publications. The Commission adopts the repeal without changes to the proposed text as published in the *Texas Register* on November 9, 2018, at (43 TexReg 7428).

The repeal as adopted will:

--Move rules on web harvesting through the Texas Records and Information Locator to the amended rule §3.3.

No comments were received regarding the repeal of the rule.

The repeal is adopted under Texas Government Code, §441.1035.

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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Jelain Chubb
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For further information, please call: (512) 463-5467

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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.307, §401.316

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.307 ("Pick 3" Draw Game Rule) and 16 TAC §401.316 ("Daily 4" Draw Game Rule) with changes to the proposed text as published in the August 24, 2018, issue of the *Texas Register* (43 TexReg 5459) and will be republished. The purpose of the amendments is to end the current Sum It Up add-on feature and replace it with a new add-on feature called FIREBALL (to be referred to as Pick 3 *plus* FIREBALL® and Daily 4 *plus* FIREBALL®). A player who purchases either the Pick 3 *plus* FIREBALL or the Daily 4 *plus* FIREBALL feature will get to use an extra number, randomly drawn after each of the Pick 3 and Daily 4 base game drawings, to create more winning combinations and increase the player's chances of winning a prize. The Commission anticipates the changes to the Pick 3 and Daily 4 games to be implemented in April 2019. In the adopted version of the rule, the prize amounts and the odds have been updated to provide players with additional detail about all the possible winning combinations and the prizes associated with those combinations. In addition, examples of the Daily 4 *plus* FIREBALL prizes in paragraphs (1) and (4) of subsection (j) have been corrected to use the "straight play order" instead of "exact order."

A public comment hearing was held on Wednesday, September 12, 2018, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No individuals were present at the hearing and the Commission did not receive any written comments on the proposed amendments during the public comment period.

The Commission will submit the adopted rulemaking document to the *Texas Register* within the time allowed by the *Texas Register* rules, and the submission will identify the effective date of the amendments to coincide with the implementation date of the FIREBALL feature. When the implementation date is established, the Commission will also communicate the implementation date to the public on the Commission's website and mobile app.

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.

§401.307. "Pick 3" Draw Game Rule.

(a) Pick 3. The executive director is authorized to conduct a game known as "Pick 3." The executive director may issue further directives and procedures for the conduct of Pick 3 that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to Draw Game Rules (General)).

(b) Definitions. In addition to the definitions provided in §401.301 of this title (relating to General Definitions), and unless the context in this rule otherwise requires, the following definitions apply.

(1) Pick 3 Play--A play other than a Pick 3 *plus* FIREBALL® play consists of:

(A) the selection of a play type;

(B) the selection of a Pick 3 base play amount of $.50, $1, $2, $3, $4 or $5;

(C) the selection of a draw date and time;

(D) the selection of numbers in accordance with this section; and

(E) the purchase of a ticket evidencing those selections.

(2) Pick 3 *plus* FIREBALL Play--A Pick 3 *plus* FIREBALL play refers to a play purchased as part of the Pick 3 *plus* FIREBALL add-on feature fully described in subsection (j) of this section. A Pick 3 FIREBALL number is the additional number drawn from zero to nine (0 to 9) that is used to replace any one (1) of the three (3) Pick 3 winning numbers to make FIREBALL prize winning combinations. The Pick 3 *plus* FIREBALL option cannot be purchased independently of a Pick 3 play.

(3) Playboard--A panel on a Pick 3 playslip containing three fields of numbers for use in selecting numbers for a Pick 3 play, with each field of numbers containing the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8 and 9.

(4) Playslip--An optically readable card issued by the commission for use in making selections for one or more Pick 3 plays and the option to select the Pick 3 *plus* FIREBALL feature.

(c) Play types.

(1) Pick 3 may include the following play types: exact order, any order, exact/any order, combo, and Pick 3 *plus* FIREBALL.

(A) An "exact order" play is a winning play if the player's three single-digit numbers match in exact order the three single-digit numbers drawn in the applicable drawing.

(B) An "any order" play is a winning play if the player's three single-digit numbers match in any order the three single-digit numbers drawn in the applicable drawing.

(C) An "exact order/any order" play is a winning play if either the player's three single-digit numbers match in exact order the numbers drawn in the applicable drawing or the player's three single-digit numbers match in any order the numbers drawn in the applicable drawing.

(i) An exact order/any order play is a 3-way play when exact order/any order play is selected as the play type in connection with a set of three single-digit numbers that includes two occurrences of one single-digit number and one occurrence of one other single-digit number. An exact order/3-way any order play involves three possible winning combinations.

(ii) An exact order/any order play is a 6-way play when exact order/any order play is selected as the play type in connection with a set of three single-digit numbers that includes a single occurrence of three different single-digit numbers. An exact order/6-way any order play involves six possible winning combinations.

(iii) An exact order/any order play is not permitted in connection with a set of numbers that includes three occurrences of one single-digit number.

(D) A "combo" play combines all of the possible straight (exact) plays that can be played with the three single-digit numbers selected for the play.

(i) A combo play may be a 3-way combo play or a 6-way combo play.

(ii) 3-way combo play is a combo play in connection with a set of three single-digit numbers that includes two occurrences of one single-digit number and one occurrence of one other single-digit number. A 3-way combo play involves three possible winning combinations.

(iii) 6-way combo play is a combo play in connection with a set of three single-digit numbers that includes a single occurrence of three different single-digit numbers. A 6-way combo play involves six possible winning combinations.

(iv) Combo play is not permitted in connection with a set of numbers that includes three occurrences of one single-digit number.

(E) A Pick 3 *plus* FIREBALL play wins a FIREBALL prize for each winning combination of numbers created by replacing any one (1) of the three (3) Pick 3 winning numbers with the Pick 3 FIREBALL number for that drawing, as determined by the selected play type and wager amount.

(2) The executive director may allow or disallow any type of play described in this subsection.

(d) Plays and tickets.

(1) A ticket may be sold only by a retailer and only at the location listed on the retailer's license. A ticket sold by a person other than a retailer is not valid.

(2) A Pick 3 play involves the selection of three single-digit numbers, with each selected from the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(3) The cost of an exact order play is the same as the Pick 3 base play amount selected for the play.

(4) The cost of an any order play is the same as the Pick 3 base play amount selected for the play.

(5) The cost of an exact order/any order play is:

(A) $1 if the Pick 3 base play amount selected for the play is $.50;

(B) $2 if the Pick 3 base play amount selected for the play is $1;

(C) $4 if the Pick 3 base play amount selected for the play is $2;

(D) $6 if the Pick 3 base play amount selected for the play is $3;

(E) $8 if the Pick 3 base play amount selected for the play is $4; or

(F) $10 if the Pick 3 base play amount selected for the play is $5.

(6) The cost of a combo play is determined by multiplying the Pick 3 base play amount selected for the play by the number of winning combinations possible with the three single-digit numbers selected for the play.

(7) The cost of a Pick 3 *plus* FIREBALL play is equal to the cost of the connected Pick 3 wager for the base game, thereby doubling the purchase. The cost of a Pick 3 *plus* FIREBALL play is in addition to the cost of the connected Pick 3 play.

(8) The cost of a ticket is determined by the total cost of the plays evidenced by the ticket.

(9) A player may complete up to five playboards on a single playslip.

(10) Acceptable methods to select numbers for a play, play type, base play amount, and draw date and time for a play may include:

(A) using a self-service terminal;

(B) using a playslip;

(C) requesting a Quick Pick;

(D) requesting a retailer to manually enter numbers;

(E) using a previously-generated "Pick 3" ticket provided by the player; or

(F) using a QR code generated through a Texas Lottery Mobile Application offered and approved by the commission.

(11) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually, or using a selection method that is not approved by the commission, is not valid.

(12) A retailer may only accept a request for a play using a commission-approved method of play, and if the request is made in person.

(13) Consecutive plays. A player may purchase one or more plays for any one or more of the next 24 drawings after the purchase and may purchase up to 24 consecutive plays for a particular drawing time.

(14) A retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers, play type and base play amount selected for each play; the number of plays, the draw date(s) for which the plays were purchased; and the security and transaction serial numbers. Tickets must be printed 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.

(15) A playslip has no monetary value and is not evidence of a play.

(16) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(17) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(e) Cancellation of plays. A retailer may cancel a Pick 3 play only in accordance with the following provisions:

(1) the ticket evidencing the play must have been sold at the retail location at which it is cancelled;

(2) the retailer must have possession of the ticket evidencing the play;

(3) all Pick 3 plays evidenced by a single ticket must be cancelled;

(4) cancellation may occur no later than 60 minutes after sale of the ticket evidencing the play;

(5) cancellation must occur before the beginning of the next draw break after the sale of the ticket evidencing the play; and

(6) cancellation must occur before midnight on the day the ticket evidencing the play was sold.

(f) Drawings.

(1) Pick 3 drawings shall be held four times a day, Monday through Saturday, at 10:00 a.m., 12:27 p.m., 6:00 p.m., and 10:12 p.m. Central Time. The executive director may change the drawing schedule, if necessary.

(2) At each Pick 3 drawing, three single-digit numbers shall be drawn for the base game. Each single-digit number will be drawn from a set that includes a single occurrence of all ten single-digit numbers (0, 1, 2, 3, 4, 5, 6, 7, 8, and 9). After the Pick 3 base game drawing, the Pick 3 FIREBALL number will be randomly drawn from a set of 10 numbered balls (0-9).

(3) Numbers drawn and the order in which the numbers are drawn must be certified by the commission in accordance with the commission's draw procedures.

(4) The numbers selected in a drawing and the order of the numbers selected in the drawing shall be used to determine all winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a lottery drawing representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(g) Prizes.

(1) Prize payments shall be made upon completion of commission validation procedures.

(2) A Pick 3 *plus* FIREBALL play is a separate play from the exact order play, any order play, exact order/any order play, or combo play with which it is connected.

(3) The executive director may temporarily increase any prize set out in this paragraph for promotional or marketing purposes.

(4) A person who holds a valid ticket for a winning exact order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(4)

(5) A person who holds a valid ticket for a winning 3-way any order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(5)

(6) A person who holds a valid ticket for a winning 6-way any order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(6)

(7) A person who holds a valid ticket for a winning exact order/3-way any order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(7)

(8) A person who holds a valid ticket for a winning exact order/6-way any order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(8)

(9) A person who holds a valid ticket for a winning combo play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(9)

(h) The executive director may authorize promotions in connection with Pick 3.

(i) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award.

(j) Pick 3 *plus* FIREBALL®.

(1) Pick 3 *plus* FIREBALL is an add-on feature to the Pick 3 base game. Adding the Pick 3 *plus* FIREBALL option doubles the cost of wager and creates more possible winning combinations. For instance, if a player purchases a Pick 3 play with an exact order play type for $1.00, the Pick 3 *plus* FIREBALL play will cost an additional $1.00. If a player purchases a Pick 3 "6-way combo" for $6, the Pick 3 *plus* FIREBALL play will cost an additional $6. The Pick 3 FIREBALL number will be randomly drawn from a set of ten (10) numbers from zero to nine (0 to 9). The Pick 3 FIREBALL number drawn will apply exclusively to the Pick 3 base game drawing and prizes. The Pick 3 *plus* FIREBALL option cannot be purchased independently of a Pick 3 play.

(2) The Pick 3 FIREBALL number is used to replace any one (1) of the three (3) drawn Pick 3 winning numbers to create FIREBALL prize winning combinations.

(3) If the player's selected numbers match any of the FIREBALL prize winning combinations, the Pick 3 *plus* FIREBALL play wins in accordance with the charts in Figures 401.307(g)(4) through 401.307(g)(9).

(4) All FIREBALL prizes are in addition to any Pick 3 base game wins. Specifically, if a player purchases the Pick 3 *plus* FIREBALL option, then if the Pick 3 FIREBALL number is the same as one of the three numbers drawn in the Pick 3 base game drawing, and the player's numbers already match the numbers drawn for the player's play type, the player will be awarded the FIREBALL prize in addition to the Pick 3 prize as identified in subsection (g) of this section (relating to the Pick 3 prize charts). For instance, assume a player selects an exact order $1.00 base game play of 1, 2, and 3, and purchases a Pick 3 *plus* FIREBALL play for an additional $1.00 (total $2.00 wager). If the Pick 3 winning numbers drawn are 1-2-3, and the Pick 3 FIREBALL number is 1, the play will win the base game prize of $500 and the FIREBALL prize of $180 for a total of $680. As another example, assume the player selects an exact order 1-2-2 for $1.00 and purchases a Pick 3 *plus* FIREBALL play for an additional $1.00 (total $2.00 wager). If the Pick 3 winning numbers drawn are 1-2-2 and the Pick 3 FIREBALL number is 2, then the play will win the base game prize of $500 and win the FIREBALL prize of $180 twice for a total of $860.

§401.316. "Daily 4" Draw Game Rule.

(a) Daily 4. The executive director is authorized to conduct a game known as "Daily 4." The executive director may issue further directives and procedures for the conduct of Daily 4 that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to Draw Game Rules (General)).

(b) Definitions. In addition to the definitions provided in §401.301 of this title (relating to General Definitions), and unless the context in this rule otherwise requires, the following definitions apply.

(1) Daily 4 Play--A play other than a Daily 4 *plus* FIREBALL play consists of:

(A) the selection of a play type;

(B) the selection of a Daily 4 base play amount of $.50, $1, $2, $3, $4 or $5;

(C) the selection of a draw date and time;

(D) the selection of numbers in accordance with this section; and

(E) the purchase of a ticket evidencing those selections.

(2) Daily 4 *plus* FIREBALL Play--A Daily 4 *plus* FIREBALL play refers to a play purchased as part of the Daily 4 *plus* FIREBALL add-on feature fully described in subsection (j) of this section. A Daily 4 FIREBALL number is the additional number drawn from zero to nine (0 to 9) that is used to replace any one (1) of the four (4) Daily 4 winning numbers to make FIREBALL prize winning combinations. The Daily 4 *plus* FIREBALL option cannot be purchased independently of a Daily 4 play.

(3) Playboard--A panel on a Daily 4 playslip containing four fields of numbers for use in selecting numbers for a Daily 4 play, with each field of numbers containing the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8 and 9.

(4) Playslip--An optically readable card issued by the commission for use in making selections for one or more Daily 4 plays and the option to select the Daily 4 *plus* FIREBALL feature.

(c) Play types.

(1) Daily 4 may include the following play types: straight, box, straight/box, combo, front-pair, mid-pair, back-pair, and Daily 4 *plus* FIREBALL.

(A) A "straight" play is a winning play if the player's four single-digit numbers match in exact order the four single-digit numbers drawn in the applicable drawing.

(B) A "box" play is a winning play if the player's four single-digit numbers match in any order the four single-digit numbers drawn in the applicable drawing.

(i) A box play may be a 4-way box play, a 6-way box play, a 12-way box play, or a 24-way box play.

(I) A box play is a 4-way box play when box play is selected as the play type in connection with a set of four single-digit numbers that includes three occurrences of one single-digit number and one occurrence of one other single-digit number. A 4-way box play involves four possible winning combinations.

(II) A box play is a 6-way box play when box play is selected as the play type in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and two occurrences of another single-digit number. A 6-way box play involves six possible winning combinations.

(III) A box play is a 12-way box play when box play is selected as the play type in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and one occurrence of two other single-digit numbers. A 12-way box play involves 12 possible winning combinations.

(IV) A box play is a 24-way box play when box play is selected as the play type in connection with a set of four single-digit numbers that includes a single occurrence of four different single-digit numbers. A 24-way box play involves 24 possible winning combinations.

(ii) Box play is not permitted in connection with a set of numbers that includes four occurrences of one single-digit number.

(C) A "straight/box" play is a winning play either if the player's four single-digit numbers match in exact order the numbers drawn in the applicable drawing or if the player's four single-digit numbers match in any order the numbers drawn in the applicable drawing. The prize amount is greater if the player's four single-digit numbers match in exact order the numbers drawn in the applicable drawing.

(i) A straight/box play may be a 4-way straight/box play, a 6-way straight/box play, a 12-way straight/box play, or a 24-way straight/box play.

(I) A straight/box play is a 4-way straight/box play when straight/box play is selected in connection with a set of four single-digit numbers that includes three occurrences of one single-digit number and one occurrence of one other single-digit number. A 4-way straight/box play involves four possible winning combinations.

(II) A straight/box play is a 6-way straight/box play when straight/box play is selected in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and two occurrences of another single-digit number. A 6-way straight/box play involves six possible winning combinations.

(III) A straight/box play is a 12-way straight/box play when straight/box play is selected in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and one occurrence of two other single-digit numbers. A 12-way straight/box play involves 12 possible winning combinations.

(IV) A straight/box play is a 24-way straight/box play when straight/box play is selected in connection with a set of four single-digit numbers that includes a single occurrence of four different single-digit numbers. A 24-way straight/box play involves 24 possible winning combinations.

(ii) Straight/box play is not permitted in connection with a set of numbers that includes four occurrences of one single-digit number.

(D) A "combo" play combines into a single play all of the possible straight plays that can be played with the four single-digit numbers selected for the play.

(i) A combo play may be a 4-way combo play, a 6-way combo play, a 12-way combo play, or a 24-way combo play.

(I) 4-way combo play is a combo play in connection with a set of four single-digit numbers that includes three occurrences of one single-digit number and one occurrence of one other single-digit number. A four-way combo play involves four possible winning combinations.

(II) 6-way combo play is a combo play in connection with a set of four single-digit numbers that includes two oc-

currences of one single-digit number and two occurrences of another single-digit number. A six-way combo play involves six possible winning combinations.

(III) 12-way combo play is a combo play in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and one occurrence of two other single-digit numbers. A 12-way combo play involves 12 possible winning combinations.

(IV) 24-way combo play is a combo play in connection with a set of four single-digit numbers that includes a single occurrence of four different single-digit numbers. A 24-way combo play involves 24 possible winning combinations.

(ii) Combo play is not permitted in connection with a set of numbers that includes four occurrences of one single-digit number.

(E) Pair play.

(i) A "front-pair" play is a winning play if the player's two single-digit numbers match in exact order the first two single-digit numbers drawn in the applicable drawing.

(ii) A "mid-pair" play is a winning play if the player's two single-digit numbers match in exact order the second and third single-digit numbers drawn in the applicable drawing.

(iii) A "back-pair" play is a winning play if the player's two single-digit numbers match in exact order the last two single-digit numbers drawn in the applicable drawing.

(F) A Daily 4 *plus* FIREBALL play wins a FIREBALL prize for each winning combination of numbers created by replacing any one (1) of the four (4) Daily 4 winning numbers with the Daily 4 FIREBALL number for that drawing, as determined by the selected play type and wager amount.

(2) The executive director may allow or disallow any type of play described in this subsection.

(d) Plays and tickets.

(1) A ticket may be sold only by a retailer and only at the location listed on the retailer's license. A ticket sold by a person other than a retailer is not valid.

(2) The selection of numbers for a straight play, a box play, a straight/box play, or a combo play involves the selection of four single-digit numbers, with each selected from the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(3) The selection of numbers for a front-pair play, a mid-pair play, or a back-pair play involves the selection of two single-digit numbers, with each selected from the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(4) The cost of a play varies according to the play type selected for the play and the base play amount selected for the play.

(A) The cost of a straight play is the same as the base play amount selected for the play.

(B) The cost of a box play is the same as the base play amount selected for the play.

(C) The cost of a straight/box play is:

(i) $1 if the base play amount selected for the play is $.50;

(ii) $2 if the base play amount selected for the play is $1;

(iii) $4 if the base play amount selected for the play is $2;

(iv) $6 if the base play amount selected for the play is $3;

(v) $8 if the base play amount selected for the play is $4; or

(vi) $10 if the base play amount selected for the play is $5.

(D) The cost of a combo play is determined by multiplying the base play amount selected for the play by the number of winning combinations possible with the four single-digit numbers selected for the play.

(E) The cost of a front-pair, mid-pair, or back-pair play is the same as the base play amount selected for the play.

(F) The cost of a Daily 4 *plus* FIREBALL play is equal to the cost of the connected Daily 4 wager for the base game, thereby doubling the purchase. The cost of a Daily 4 *plus* FIREBALL play is in addition to the cost of the Daily 4 play with which the Daily 4 *plus* FIREBALL play is connected.

(5) The cost of a ticket is determined by the total cost of the plays evidenced by the ticket.

(6) A player may complete up to five playboards on a single playslip.

(7) Acceptable methods to select numbers for a play, play type, base play amount, and draw date and time for a play may include:

(A) using a self-service terminal;

(B) using a playslip;

(C) requesting a Quick Pick;

(D) requesting a retailer to manually enter numbers;

(E) using a previously-generated "Daily 4" ticket provided by the player; or

(F) using a QR code generated through a Texas Lottery Mobile Application offered and approved by the commission.

(8) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually, or using a selection method that is not approved by the commission, is not valid.

(9) A retailer may only accept a request for a play using a commission-approved method of play, and if the request is made in person.

(10) A player may purchase one or more plays for any one or more of the next 24 drawings after the purchase and may purchase up to 24 consecutive plays for a drawing time.

(11) A retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers, play type and base play amount selected for each play; the number of plays, the draw date(s) for which the plays were purchased; and the security and transaction serial numbers. Tickets must be printed 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.

(12) A playslip has no monetary value and is not evidence of a play.

(13) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(14) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(e) Cancellation of plays. A retailer may cancel a Daily 4 play, including a Daily 4 *plus* FIREBALL play, only in accordance with the following provisions:

(1) The ticket evidencing the play must have been sold at the retail location at which it is cancelled;

(2) The retailer must have possession of the ticket evidencing the play;

(3) All Daily 4 plays evidenced by a single ticket must be cancelled;

(4) Cancellation must occur no later than 60 minutes after sale of the ticket evidencing the play;

(5) Cancellation must occur before the beginning of the next draw break after the sale of the ticket evidencing the play; and

(6) Cancellation must occur before midnight on the day the ticket evidencing the play was sold.

(f) Drawings.

(1) Daily 4 drawings shall be held four times a day, Monday through Saturday, at 10:00 a.m., 12:27 p.m., 6:00 p.m., and 10:12 p.m. Central Time. The executive director may change the drawing schedule, if necessary.

(2) At each Daily 4 drawing, four single-digit numbers shall be drawn for the base game. Each single-digit number will be drawn from a set that includes a single occurrence of all ten single-digit numbers (0, 1, 2, 3, 4, 5, 6, 7, 8, and 9). After the base game drawing, the Daily 4 FIREBALL number will be randomly drawn from a set of 10 numbered balls (0-9).

(3) Numbers drawn and the order in which the numbers are drawn must be certified by the commission in accordance with the commission's draw procedures.

(4) The numbers selected in a drawing and the order of the numbers selected in the drawing shall be used to determine all winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a lottery drawing representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(g) Prizes.

(1) Prize payments shall be made upon completion of commission validation procedures.

(2) A Daily 4 *plus* FIREBALL play is a separate play from the straight play, box play, straight/box play, combo play or pairs play with which it is connected.

(3) The executive director may temporarily increase any prize set out in this subsection for promotional or marketing purposes.

(4) A person who holds a valid ticket for a winning straight play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(4)

(5) A person who holds a valid ticket for a winning 4-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(5)

(6) A person who holds a valid ticket for a winning 6-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(6)

(7) A person who holds a valid ticket for a winning 12-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(7)

(8) A person who holds a valid ticket for a winning 24-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(8)

(9) A person who holds a valid ticket for a winning straight/4-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(9)

(10) A person who holds a valid ticket for a winning straight/6-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(10)

(11) A person who holds a valid ticket for a winning straight/12-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(11)

(12) A person who holds a valid ticket for a winning straight/24-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(12)

(13) A person who holds a valid ticket for a winning combo play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(13)

(14) A person who holds a valid ticket for a winning front-pair, mid-pair, or back-pair play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(14)

(h) The executive director may authorize promotions in connection with Daily 4.

(i) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award.

(j) Daily 4 *plus* FIREBALL®.

(1) Daily 4 *plus* FIREBALL is an add-on feature to the Daily 4 base game. Adding the Daily 4 *plus* FIREBALL option doubles the cost of the wager and creates more possible winning combinations. For instance, if a player purchases a Daily 4 play with a straight order play type for $1.00, the Daily 4 *plus* FIREBALL play will cost an additional $1.00. If a player purchases a Daily 4 "6-way combo" for $6, the Daily 4 *plus* FIREBALL play option will cost an additional $6. The Daily 4 FIREBALL number will be randomly drawn from a set of ten (10) numbers from zero to nine (0 to 9). The Daily 4 FIREBALL number drawn will apply exclusively to the Daily 4 base game drawing and prizes. The Daily 4 *plus* FIREBALL option cannot be purchased independently of a Daily 4 play.

(2) The Daily 4 FIREBALL number is used to replace any one (1) of the four (4) drawn Daily 4 winning numbers to create FIREBALL prize winning combinations.

(3) If the player's selected numbers match any of the FIREBALL prize winning combinations, the Daily 4 *plus* FIREBALL play wins in accordance with the charts in Figures 401.316(g)(4) through 401.316(g)(14).

(4) All FIREBALL prizes are in addition to any Daily 4 base game wins. Specifically, if a player purchases the Daily 4 *plus* FIREBALL option, then if the Daily 4 FIREBALL number is the same as one of the four numbers drawn in the Daily 4 base game drawing, and the player's numbers already match the numbers drawn for the player's play type, the player will be awarded the FIREBALL prize, in addition to the Daily 4 prize as identified in subsection (g) of this section (relating to the Daily 4 prize charts). For instance, assume a player selects 1, 2, 3, and 4 in a straight play order for the base game at $1.00 and purchases a Daily 4 *plus* FIREBALL play for an additional $1.00 (total $2.00 wager). If the numbers drawn are 1, 2, 3, and 4 and the Daily 4 FIREBALL number is 4, the play will win the base game prize of $5000 and the FIREBALL prize of $1350, for a total of $6350.

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 22, 2019.

TRD-201900631
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: April 28, 2019
Proposal publication date: August 24, 2018
For further information, please call: (512) 344-5012

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.28

The State Board of Education (SBOE) adopts an amendment to §74.28, concerning students with dyslexia and related disorders. The amendment is adopted without changes to the proposed text as published in the December 28, 2018 issue of the *Texas Register* (43 TexReg 8543) and will not be republished. The amendment adopts in rule as a figure the updated *Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders (Dyslexia Handbook).*

REASONED JUSTIFICATION. Section 74.28 provides guidance to school districts and open-enrollment charter schools for identifying students with dyslexia or related disorders and providing appropriate services to those students.

Texas Education Agency convened two committees to develop recommendations to update the *Dyslexia Handbook,* one committee to review updates related to screening students and a second committee to review updates related to student identification. The two committees were convened in March, May, June, July, and August 2018 to make recommendations for updates to the *Dyslexia Handbook.* The SBOE approved updates to the *Dyslexia Handbook* at its November 16, 2018 meeting.

The proposed amendment would adopt the updated *Dyslexia Handbook* as Figure: 19 TAC §74.28(c).

The SBOE approved the amendment for first reading and filing authorization at its November 16, 2018 meeting and for second reading and final adoption at its February 1, 2019 meeting.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2019-2020 school year. The earlier effective date will allow for the rule to become effective so that districts can benefit from additional guidance for serving students with dyslexia and related disorders as soon as possible. The effective date of the amendment is 20 days after filing as adopted with the *Texas Register.*

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began December 28, 2018, and ended at the January-February 2018 SBOE meeting. No public comments were received on the proposal.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.102(c)(28), which requires the State Board of Education (SBOE) to approve a program for testing students for dyslexia and related disorders; and TEC, §38.003, which requires that students enrolling in public schools be screened or tested, as appropriate, for dyslexia and related disorders at appropriate times in accordance with a program approved by the SBOE. The program must include screening at the end of the school year of each student in kindergarten and each student in the first grade.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.102(c)(28) and §38.003.

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 21, 2019.

TRD-201900623
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: March 13, 2019
Proposal publication date: December 28, 2018
For further information, please call: (512) 475-1497

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CHAPTER 117. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR FINE ARTS

SUBCHAPTER C. HIGH SCHOOL, ADOPTED 2013

19 TAC §117.327, §117.328

The State Board of Education (SBOE) adopts new §117.327 and §117.328, concerning Texas Essential Knowledge and Skills (TEKS) for fine arts. The new sections are adopted without changes to the proposed text as published in the December 28, 2018 issue of the *Texas Register* (43 TexReg 8545) and will not be republished. The new sections add two International Baccalaureate (IB) courses to the fine arts TEKS to align with current course offerings by the International Baccalaureate Organization.

REASONED JUSTIFICATION. In order for students to earn state credit toward specific graduation requirements, a course must be approved by the SBOE and included in administrative rule. At the September 2017 SBOE meeting, the Committee on Instruction discussed 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 TEA staff prepare rule text to address these issues and requested that staff balance the chapters that would be updated over two different meetings. At the January-February 2018 meeting, the SBOE approved proposed revisions to English language arts and reading, mathematics, science, and languages other than English IB courses for second reading and final adoption. The SBOE's approval included the addition of eight IB courses to SBOE rules and updates that increased the amount of credit available for 17 IB courses currently in rule. The revisions became effective August 27, 2018.

At the April 2018 meeting, the SBOE approved for second reading and final adoption proposed revisions to align the TEKS in science, social studies, economics, and technology applications with additional IB course offerings and update the amount of credit available for both IB and AP courses in these subject areas. The SBOE's approval included the addition of nine IB courses to SBOE rules and updates to the amount of credit available for seven AP and IB courses currently in rule. The revisions became effective August 27, 2018.

In spring 2015, IB Film Standard Level and IB Film Higher Level were approved as innovative courses 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.

The SBOE held a discussion regarding the addition of IB film courses to the fine arts TEKS at the September 2018 meeting. At that time, the SBOE instructed staff to prepare proposed rules to add these two courses to the fine arts TEKS.

The new sections add §117.327, International Baccalaureate (IB) Film Standard Level (SL) (Two Credits), and §117.328, International Baccalaureate (IB) Film Higher Level (HL) (Two Credits), to the fine arts TEKS. The new courses would be effective beginning with the 2019-2020 school year.

The SBOE approved the new sections for first reading and filing authorization at its November 16, 2018 meeting and for second reading and final adoption at its February 1, 2019 meeting.

The effective date of the new sections is August 26, 2019.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began December 28, 2018, and ended at the January-February 2018 SBOE meeting. Following is a summary of the public comment received on the proposal and the response.

Comment: An administrator asked for clarification about whether the proposed new courses would require certification in fine arts, career and technical education, or technology applications. The commenter added that it may be difficult to find qualified instructors for the new courses.

Response: This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new sections are adopted 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, which identifies the subjects of the required curriculum and 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; and TEC, §28.025, 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 the TEC, §28.002.

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

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 21, 2019.

TRD-201900622
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 26, 2019
Proposal publication date: December 28, 2018
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.68

The Texas State Board of Pharmacy adopts amendments to §281.68, concerning Remedial Plan. These amendments are adopted without changes to the proposed text as published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 18) and will not be republished.

The amendments clarify that the Board shall remove all records of a completed remedial plan at the end of the fiscal year of the fifth anniversary of the date the board entered the remedial plan in accordance with §565.060 of the Pharmacy Act.

No comments were received.

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

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

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 20, 2019.

TRD-201900608
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: March 12, 2019
Proposal publication date: January 4, 2019
For further information, please call: (512) 305-8010

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CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.12

The Texas State Board of Pharmacy adopts amendments to §283.12, concerning Licenses for Military Service Members, Military Veterans, and Military Spouses. These amendments are adopted without changes to the proposed text as published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 19) and will not be republished.

The amendments allow a military service member, military veteran, or military spouse to place his or her pharmacist license on inactive status while not practicing pharmacy in Texas without paying a fee.

No comments were received.

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

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

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

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CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.31

The Texas State Board of Pharmacy adopts amendments to §291.31, concerning Definitions. These amendments are adopted with changes to correct alphabetization to the proposed text as published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 21). The rules will be republished.

The amendments update the definitions of an automated counting device and automated pharmacy dispensing system, and correct grammatical errors.

No comments were received.

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

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

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

(1) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Chapter 562 of the Texas Pharmacy Act.

(2) Act--The Texas Pharmacy Act, Chapters 551 - 569, Occupations Code, as amended.

(3) Advanced practice registered nurse--A registered nurse licensed by the Texas Board of Nursing to practice as an advanced practice registered nurse on the basis of completion of an advanced education program. The term includes nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with advanced nurse practitioner and advanced practice nurse.

(4) Automated checking device--A device that confirms that the correct drug and strength has been labeled with the correct label for the correct patient prior to delivery of the drug to the patient.

(5) Automated counting device--An automated device that is loaded with bulk drugs and counts and/or packages (i.e., fills a vial or other container) a specified quantity of dosage units of a designated drug product.

(6) Automated pharmacy dispensing system--A system that automatically performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, and labeling for dispensing and delivery of medications, and that collects, controls, and maintains all transaction information.

"Automated pharmacy dispensing system" does not mean "Automated compounding or counting device" or "Automated medication supply device."

(7) Beyond use date--The date beyond which a product should not be used.

(8) Board--The Texas State Board of Pharmacy.

(9) Confidential record--Any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication order.

(10) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended (Chapter 481, Health and Safety Code), or a drug, immediate precursor, or other substance included in Schedules I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(11) Dangerous drug--A drug or device that:

(A) is not included in Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, (Chapter 481, Health and Safety Code), and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(12) Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(13) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(14) Designated agent--

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner to communicate prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order;

(C) an advanced practice registered nurse or physician assistant authorized by a practitioner to prescribe or order drugs or devices under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code); or

(D) a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse designated by the practitioner to communicate prescriptions for an advanced practice registered nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code).

(15) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(16) Dispensing error--An action committed by a pharmacist or other pharmacy personnel that causes the patient or patient's agent to take possession of a dispensed prescription drug and an individual subsequently discovers that the patient has received an incorrect drug product, which includes incorrect strength, incorrect dosage form, and/or incorrect directions for use.

(17) Dispensing pharmacist--The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(18) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(19) Downtime--Period of time during which a data processing system is not operable.

(20) Drug regimen review--An evaluation of prescription drug orders and patient medication records for:

(A) known allergies;

(B) rational therapy-contraindications;

(C) reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) drug-drug interactions;

(G) drug-food interactions;

(H) drug-disease interactions;

(I) adverse drug reactions; and

(J) proper utilization, including overutilization or underutilization.

(21) Electronic prescription drug order--A prescription drug order that is generated on an electronic application and transmitted as an electronic data file.

(22) Electronic signature--A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(23) Electronic verification process--an electronic verification, bar code verification, weight verification, radio frequency identification (RFID), or similar electronic process or system that accurately verifies that medication has been properly dispensed and labeled by, or loaded into, an automated pharmacy dispensing system.

(24) Full-time pharmacist--A pharmacist who works in a pharmacy from 30 to 40 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(25) Hard copy--A physical document that is readable without the use of a special device.

(26) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(27) Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(28) Medication order--A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(29) New prescription drug order--A prescription drug order that has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year.

(30) Original prescription--The:

(A) original written prescription drug order; or

(B) original verbal or electronic prescription drug order reduced to writing either manually or electronically by the pharmacist.

(31) Part-time pharmacist--A pharmacist who works less than full-time.

(32) Patient counseling--Communication by the pharmacist of information to the patient or patient's agent in order to improve therapy by ensuring proper use of drugs and devices.

(33) Patient med-pak--A package prepared by a pharmacist for a specific patient comprised of a series of containers and containing two or more prescribed solid oral dosage forms. The patient med-pak is so designed or each container is so labeled as to indicate the day and time, or period of time, that the contents within each container are to be taken.

(34) Pharmaceutical care--The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(35) Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(36) Pharmacy technician--An individual who is registered with the board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(37) Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

(38) Physician assistant--A physician assistant recognized by the Texas Medical Board as having the specialized education and training required under Subtitle B, Chapter 157, Occupations Code, and issued an identification number by the Texas Medical Board.

(39) Practitioner--

(A) a person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under this Act;

(B) a person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this state, a license holder in this state may legally prescribe a dangerous drug;

(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state; or

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order drugs or devices under Chapter 157 of the Medical Practice Act (Subtitle B, Occupations Code) or, for the purpose of this subchapter, a pharmacist who practices in a hospital, hospital-based clinic, or an academic health care institution and to whom a physician has delegated the authority to sign a prescription for a dangerous drug under §157.101, Occupations Code.

(40) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container, unit-dose packaging, or multi-compartment container for dispensing by a pharmacist to the ultimate consumer, including dispensing through the use of an automated pharmacy dispensing system or automated checking device.

(41) Prescription department--The area of a pharmacy that contains prescription drugs.

(42) Prescription drug--

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

(43) Prescription drug order--

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to Subtitle B, Chapter 157, Occupations Code.

(44) Prospective drug use review--A review of the patient's drug therapy and prescription drug order or medication order prior to dispensing or distributing the drug.

(45) State--One of the 50 United States of America, a U.S. territory, or the District of Columbia.

(46) Texas Controlled Substances Act--The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(47) Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Texas Medical Practice Act.

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

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22 TAC §291.33

The Texas State Board of Pharmacy adopts amendments to §291.33, concerning Operational Standards. These amendments are adopted with changes to the proposed text as published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 24) and will be republished. The Board made changes to correct grammatical and formatting errors.

The amendments clarify the pharmacist's patient counseling duties by expressly prohibiting a pharmacy's computer system from asking questions of the patient intended to screen and/or limit interaction with the pharmacist and update the requirements for the use of automated devices and systems in Class A pharmacies to be consistent with the proposed updated definitions in §291.31 and changes in technology, remove the provisions relating to automated storage and distribution devices from this section, and correct grammatical errors.

No comments were received.

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

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

§291.33. Operational Standards.

(a) Licensing requirements.

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

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

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

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

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

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

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

(8) A Class A pharmacy, licensed under the provisions of the Act, §560.051(a)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(2) concerning Nuclear Pharmacy (Class B), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of Subchapter C of this chapter (relating to Nuclear Pharmacy (Class B)), to the extent such sections are applicable to the operation of the pharmacy.

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

(10) A Class A pharmacy shall not compound sterile preparations.

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

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

(b) Environment.

(1) General requirements.

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

(B) A Class A pharmacy shall have a sink with hot and cold running water within the pharmacy, exclusive of restroom facilities, available to all pharmacy personnel and maintained in a sanitary condition.

(C) A Class A pharmacy which serves the general public shall contain an area which is suitable for confidential patient counseling.

(i) Such counseling area shall be:

(I) easily accessible to both patient and pharmacists and not allow patient access to prescription drugs; and

(II) designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

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

(E) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(F) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, service animals accompanying disabled persons, or animals for sale to the general public in a separate area that is inspected by local health jurisdictions.

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

(2) Security.

(A) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

(B) The prescription department shall be locked by key, combination or other mechanical or electronic means to prohibit unauthorized access when a pharmacist is not on-site except as provided in subparagraphs (C) and (D) of this paragraph and paragraph (3) of this subsection. The following is applicable:

(i) If the prescription department is closed at any time when the rest of the facility is open, the prescription department must be physically or electronically secured. The security may be accomplished by means such as floor to ceiling walls; walls, partitions, or barriers at least 9 feet 6 inches high; electronically monitored motion detectors; pull down sliders; or other systems or technologies that will secure the pharmacy from unauthorized entrance when the pharmacy is closed. Pharmacies licensed prior to June 1, 2009, shall be exempt from this provision unless the pharmacy changes location. Change of location shall include the relocation of the pharmacy within the licensed address. A pharmacy licensed prior to June 1, 2009 that files a change of ownership but does not change location shall be exempt from the provisions.

(ii) The pharmacy's key, combination, or other mechanical or electronic means of locking the pharmacy may not be duplicated without the authorization of the pharmacist-in-charge or owner.

(iii) At a minimum, the pharmacy must have a basic alarm system with off-site monitoring and perimeter and motion sensors. The pharmacy may have additional security by video surveillance camera systems.

(C) Prior to authorizing individuals to enter the prescription department, the pharmacist-in-charge or owner may designate persons who may enter the prescription department to perform functions, other than dispensing functions or prescription processing, documented by the pharmacist-in-charge including access to the prescription department by other pharmacists, pharmacy personnel and other individuals. The pharmacy must maintain written documentation of authorized individuals other than individuals employed by the pharmacy who accessed the prescription department when a pharmacist is not on-site.

(D) Only persons designated either by name or by title including such titles as "relief" or "floater" pharmacist, in writing by the pharmacist-in-charge may unlock the prescription department except in emergency situations. An additional key to or instructions on accessing the prescription department may be maintained in a secure location outside the prescription department for use during an emergency or as designated by the pharmacist-in-charge.

(E) Written policies and procedures for the pharmacy's security shall be developed and implemented by the pharmacist-in-charge and/or the owner of the pharmacy. Such policies and procedures may include quarterly audits of controlled substances commonly abused or diverted; perpetual inventories for the comparison of the receipt, dispensing, and distribution of controlled substances; monthly reports from the pharmacy's wholesaler(s) of controlled substances purchased by the pharmacy; opening and closing procedures; product storage and placement; and central management oversight.

(3) Temporary absence of pharmacist.

(A) On-site supervision by pharmacist.

(i) If a pharmacy is staffed by only one pharmacist, the pharmacist may leave the prescription department for short periods of time without closing the prescription department and removing pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department provided the following conditions are met:

(I) at least one pharmacy technician remains in the prescription department;

(II) the pharmacist remains on-site at the licensed location of the pharmacy and is immediately available;

(III) the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians, pharmacy technician trainees, and other pharmacy personnel from the prescription department during his or her absence; and

(IV) a notice is posted which includes the following information:

(-a-) the pharmacist is on a break and the time the pharmacist will return; and

(-b-) pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist's absence, but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist verifies the accuracy of the prescription.

(ii) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(I) initiating and receiving refill authorization requests;

(II) entering prescription data into a data processing system;

(III) taking a stock bottle from the shelf for a prescription;

(IV) preparing and packaging prescription drug orders (e.g., counting tablets/capsules, measuring liquids, or placing them in the prescription container);

(V) affixing prescription labels and auxiliary labels to the prescription container; and

(VI) prepackaging and labeling prepackaged drugs.

(iii) Upon return to the prescription department, the pharmacist shall:

(I) conduct a drug regimen review as specified in subsection (c)(2) of this section; and

(II) verify the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.

(iv) An agent of the pharmacist may deliver a previously verified prescription to the patient or his or her agent provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(v) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(vi) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered pharmacy technician and may perform only the duties of a registered pharmacy technician.

(vii) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.

(B) Pharmacist is off-site.

(i) The prescription department must be secured with procedures for entry during the time that a pharmacy is not under the continuous on-site supervision of a pharmacist and the pharmacy is not open for pharmacy services.

(ii) Pharmacy technicians and pharmacy technician trainees may not perform any duties of a pharmacy technician or pharmacy technician trainee during the time that the pharmacist is off-site.

(iii) A pharmacy may use an automated storage and distribution device as specified in subsection (i)(4) of this section for pick-up of a previously verified prescription by a patient or patient's agent.

(iv) An agent of the pharmacist may deliver a previously verified prescription to a patient or patient's agent during short periods of time when a pharmacist is off-site, provided the following conditions are met:

(I) short periods of time may not exceed two consecutive hours in a 24 hour period;

(II) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return;

(III) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(IV) the prescription department is locked and secured to prohibit unauthorized entry.

(v) During the time a pharmacist is absent from the prescription department and is off-site, a record of prescriptions delivered must be maintained and contain the following information:

(I) date and time of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(vi) Any prescription delivered to a patient when a pharmacist is not on-site at the pharmacy must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(i) name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self-monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication shall be:

(i) provided to new and existing patients of a pharmacy with each new prescription drug order. A new prescription drug order is one that has not been dispensed by the pharmacy to the patient in the same dosage and strength within the last year;

(ii) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication;

(iv) documented by recording the initials or identification code of the pharmacist providing the counseling in the prescription dispensing record as follows:

(I) on the original hard-copy prescription, provided the counseling pharmacist clearly records his or her initials on the prescription for the purpose of identifying who provided the counseling;

(II) in the pharmacy's data processing system;

(III) in an electronic logbook; or

(IV) in a hard-copy log; and

(v) reinforced with written information relevant to the prescription and provided to the patient or patient's agent. The following is applicable concerning this written information:

(I) Written information must be in plain language designed for the patient and printed in an easily readable font size comparable to but no smaller than ten-point Times Roman. This information may be provided to the patient in an electronic format, such as by e-mail, if the patient or patient's agent requests the information in an electronic format and the pharmacy documents the request.

(II) When a compounded preparation is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(IV) The written information accompanying the prescription or the prescription label shall contain the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(C) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel and/or the pharmacy's computer system may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable:

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section.

(ii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.

(F) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable:

(i) The information as specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and, if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(iv) The pharmacy shall maintain and use adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(v) The pharmacy shall use a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(G) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2) Pharmaceutical care services.

(A) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall, prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

(I) known allergies;

(II) rational therapy-contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions; and

(X) proper utilization, including overutilization or underutilization.

(ii) Upon identifying any clinically significant conditions, situations, or items listed in clause (i) of this subparagraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences as specified in subparagraph (C) of this paragraph.

(iii) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic database from outside the pharmacy by:

(I) an individual Texas licensed pharmacist employee of the pharmacy provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records; or

(II) a pharmacist employed by a Class E pharmacy provided the pharmacies have entered into a written contract or agreement which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations.

(iv) Prior to dispensing, any questions regarding a prescription drug order must be resolved with the prescriber and written documentation of these discussions made and maintained as specified in subparagraph (C) of this paragraph.

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

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

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

(iii) managing patient compliance programs;

(iv) providing preventative health care services; and

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

(C) Documentation of consultation. When a pharmacist consults a prescriber as described in subparagraph (A) of this paragraph, the pharmacist shall document on the prescription or in the pharmacy's data processing system associated with the prescription such occurrences and shall include the following information:

(i) date the prescriber was consulted;

(ii) name of the person communicating the prescriber's instructions;

(iii) any applicable information pertaining to the consultation; and

(iv) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation.

(3) Substitution of generically equivalent drugs or interchangeable biological products. A pharmacist may dispense a generically equivalent drug or interchangeable biological product and shall comply with the provisions of §309.3 of this title (relating to Substitution Requirements).

(4) Substitution of dosage form.

(A) As specified in §562.012 of the Act, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided:

(i) the patient consents to the dosage form substitution; and

(ii) the dosage form so dispensed:

(I) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(II) is not an enteric-coated or time release product; and

(III) does not alter desired clinical outcomes.

(B) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(5) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This paragraph does not apply to generic substitution. For generic substitution, see the requirements of paragraph (3) of this subsection.

(A) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery of, the dispensed prescription to the patient. Such notification shall include:

(i) a description of the change;

(ii) the reason for the change;

(iii) whom to notify with questions concerning the change; and

(iv) instructions for return of the drug if not wanted by the patient.

(B) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

(i) the date of the notification;

(ii) the method of notification;

(iii) a description of the change; and

(iv) the reason for the change.

(C) The provisions of this paragraph do not apply to prescriptions for patients in facilities where drugs are administered to patients by a person required to do so by the laws of this state if the practitioner issuing the prescription has agreed to use of a formulary that includes a listing of therapeutic interchanges that the practitioner has agreed to allow. The pharmacy must maintain a copy of the formulary including a list of the practitioners that have agreed to the formulary and the signature of these practitioners.

(6) Prescription containers.

(A) A drug dispensed pursuant to a prescription drug order shall be dispensed in a child-resistant container unless:

(i) the patient or the practitioner requests the prescription not be dispensed in a child-resistant container; or

(ii) the product is exempted from requirements of the Poison Prevention Packaging Act of 1970.

(B) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as specified on the manufacturer's container.

(C) Prescription containers or closures shall not be re-used. However, if a patient or patient's agent has difficulty reading or understanding a prescription label, a prescription container may be reused provided:

(i) the container is designed to provide audio-recorded information about the proper use of the prescription medication;

(ii) the container is reused for the same patient;

(iii) the container is cleaned; and

(iv) a new safety closure is used each time the prescription container is reused.

(7) Labeling.

(A) At the time of delivery of the drug, the dispensing container shall bear a label in plain language and printed in an easily readable font size, unless otherwise specified, with at least the following information:

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

(ii) unique identification number of the prescription that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(iii) date the prescription is dispensed;

(iv) initials or an identification code of the dispensing pharmacist;

(v) name of the prescribing practitioner;

(vi) if the prescription was signed by a pharmacist, the name of the pharmacist who signed the prescription for a dangerous drug under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code;

(vii) name of the patient or if such drug was prescribed for an animal, the species of the animal and the name of the owner that is printed in an easily readable font size comparable to but no smaller than ten-point Times Roman. The name of the patient's partner or family member is not required to be on the label of a drug prescribed for a partner for a sexually transmitted disease or for a patient's family members if the patient has an illness determined by the Centers for Disease Control and Prevention, the World Health Organization, or the Governor's office to be pandemic;

(viii) instructions for use that are printed in an easily readable font size comparable to but no smaller than ten-point Times Roman;

(ix) quantity dispensed;

(x) appropriate ancillary instructions such as storage instructions or cautionary statements such as warnings of potential harmful effects of combining the drug product with any product containing alcohol;

(xi) if the prescription is for a Schedule II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(xii) if the pharmacist has selected a generically equivalent drug or interchangeable biological product pursuant to the provisions of the Act, Chapter 562, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(xiii) the name and strength of the actual drug or biological product dispensed that is printed in an easily readable size comparable to but no smaller than ten-point Times Roman, unless otherwise directed by the prescribing practitioner;

(I) The name shall be either:

(-a-) the brand name; or

(-b-) if no brand name, then the generic drug or interchangeable biological product name and name of the manufacturer or distributor of such generic drug or interchangeable biological product. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug preparations having no brand name, the principal active ingredients shall be indicated on the label.)

(II) Except as provided in clause (xii) of this subparagraph, the brand name of the prescribed drug or biological product shall not appear on the prescription container label unless it is the drug product actually dispensed.

(xiv) if the drug is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(xv) either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement.

(B) If the prescription label required in subparagraph (A) of this paragraph is printed in a type size smaller than ten-point Times Roman, the pharmacy shall provide the patient written information containing the information as specified in subparagraph (A) of this paragraph in an easily readable font size comparable to but no smaller than ten-point Times Roman.

(C) The label is not required to include the initials or identification code of the dispensing pharmacist as specified in subparagraph (A) of this paragraph if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(D) The dispensing container is not required to bear the label as specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 90-day supply is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of the drug dispensed;

(-d-) name of the patient; and

(-e-) name of the prescribing practitioner or, if applicable, the name of the pharmacist who signed the prescription drug order;

(II) if the drug is dispensed in a container other than the manufacturer's original container, specifies the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the drug is dispensed or the manufacturer's expiration date, whichever is earlier. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(8) Returning Undelivered Medication to Stock.

(A) As specified in §431.021(w), Health and Safety Code, a pharmacist may not accept an unused prescription or drug, in whole or in part, for the purpose of resale or re-dispensing to any person after the prescription or drug has been originally dispensed or sold, except as provided in §291.8 of this title (relating to Return of Prescription Drugs). Prescriptions that have not been picked up by or delivered to the patient or patient's agent may be returned to the pharmacy's stock for dispensing.

(B) A pharmacist shall evaluate the quality and safety of the prescriptions to be returned to stock.

(C) Prescriptions returned to stock for dispensing shall not be mixed within the manufacturer's container.

(D) Prescriptions returned to stock for dispensing should be used as soon as possible and stored in the dispensing container. The expiration date of the medication shall be the lesser of one year from the dispensing date on the prescription label or the manufacturer's expiration date if dispensed in the manufacturer's original container.

(E) At the time of dispensing, the prescription medication shall be placed in a new prescription container and not dispensed in the previously labeled container unless the label can be completely removed. However, if the medication is in the manufacturer's original container, the pharmacy label must be removed so that no confidential patient information is released.

(d) Equipment and supplies. Class A pharmacies dispensing prescription drug orders shall have the following equipment and supplies:

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

(2) refrigerator;

(3) adequate supply of child-resistant, light-resistant, tight, and if applicable, glass containers;

(4) adequate supply of prescription, poison, and other applicable labels;

(5) appropriate equipment necessary for the proper preparation of prescription drug orders; and

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

(e) Library. A reference library shall be maintained which includes the following in hard-copy or electronic format:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and rules; and

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

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

(A) a patient prescription drug information reference text or leaflets which are designed for the patient and must be available to the patient;

(B) at least one current or updated general drug information reference which is required to contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken; and

(C) if the pharmacy dispenses veterinary prescriptions, a general reference text on veterinary drugs; and

(3) basic antidote information and the telephone number of the nearest Regional Poison Control Center.

(f) Drugs.

(1) Procurement and storage.

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

(B) Prescription drugs and devices and nonprescription Schedule V controlled substances shall be stored within the prescription department or a locked storage area.

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

(2) Out-of-date drugs or devices.

(A) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(B) Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

(3) Nonprescription Schedule V controlled substances.

(A) Schedule V controlled substances containing codeine, dihydrocodeine, or any of the salts of codeine or dihydrocodeine may not be distributed without a prescription drug order from a practitioner.

(B) A pharmacist may distribute nonprescription Schedule V controlled substances which contain no more than 15 milligrams of opium per 29.5729 ml or per 28.35 Gm provided:

(i) such distribution is made only by a pharmacist; a nonpharmacist employee may not distribute a nonprescription Schedule V controlled substance even if under the supervision of a pharmacist; however, after the pharmacist has fulfilled professional and legal responsibilities, the actual cash, credit transaction, or delivery may be completed by a nonpharmacist:

(ii) not more than 240 ml (eight fluid ounces), or not more than 48 solid dosage units of any substance containing opium, may be distributed to the same purchaser in any given 48-hour period without a prescription drug order;

(iii) the purchaser is at least 18 years of age; and

(iv) the pharmacist requires every purchaser not known to the pharmacist to furnish suitable identification (including proof of age where appropriate).

(C) A record of such distribution shall be maintained by the pharmacy in a bound record book. The record shall contain the following information:

(i) true name of the purchaser;

(ii) current address of the purchaser;

(iii) name and quantity of controlled substance purchased;

(iv) date of each purchase; and

(v) signature or written initials of the distributing pharmacist.

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

(g) Prepackaging of drugs.

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

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

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

(B) facility's lot number;

(C) facility's beyond use date; and

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

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

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

(B) facility's lot number;

(C) manufacturer or distributor;

(D) manufacturer's lot number;

(E) manufacturer's expiration date;

(F) quantity per prepackaged unit;

(G) number of prepackaged units;

(H) date packaged;

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

(J) signature, or electronic signature of the responsible pharmacist.

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

(h) Customized patient medication packages.

(1) Purpose. In lieu of dispensing two or more prescribed drug products in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or the prescriber, provide a customized patient medication package (patient med-pak).

(2) Label.

(A) The patient med-pak shall bear a label stating:

(i) the name of the patient;

(ii) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(iii) the name, strength, physical description or identification, and total quantity of each drug product contained therein;

(iv) the directions for use and cautionary statements, if any, contained in the prescription drug order for each drug product contained therein;

(v) if applicable, a warning of the potential harmful effect of combining any form of alcoholic beverage with any drug product contained therein;

(vi) any storage instructions or cautionary statements required by the official compendia;

(vii) the name of the prescriber of each drug product;

(viii) the name, address, and telephone number of the pharmacy;

(ix) the initials or an identification code of the dispensing pharmacist;

(x) the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a

product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication;

(xi) either on the prescription label or the written information accompanying the prescription, the statement "Do not flush unused medications or pour down a sink or drain." A drug product on a list developed by the Federal Food and Drug Administration of medicines recommended for disposal by flushing is not required to bear this statement; and

(xii) any other information, statements, or warnings required for any of the drug products contained therein.

(B) If the patient med-pak allows for the removal or separation of the intact containers therefrom, each individual container shall bear a label identifying each of the drug product contained therein.

(C) The dispensing container is not required to bear the label as specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 90-day supply is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) name and strength of each drug product dispensed;

(-c-) name of the patient; and

(-d-) name of the prescribing practitioner of each drug product, or the pharmacist who signed the prescription drug order;

(II) the date after which the prescription should not be used or beyond-use-date. Unless otherwise specified by the manufacturer, the beyond-use-date shall be one year from the date the med-pak is dispensed or the earliest manufacturer's expiration date for a product contained in the med-pak if it is less than one-year from the date dispensed. The beyond-use-date may be placed on the prescription label or on a flag label attached to the bottle. A beyond-use-date is not required on the label of a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication; and

(III) for each drug product sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(3) Labeling. The patient med-pak shall be accompanied by a patient package insert, in the event that any drug contained therein is required to be dispensed with such insert as accompanying labeling. Alternatively, such required information may be incorporated into a single, overall educational insert provided by the pharmacist for the total patient med-pak.

(4) Packaging. In the absence of more stringent packaging requirements for any of the drug products contained therein, each container of the patient med-pak shall comply with official packaging standards. Each container shall be either not reclosable or so designed as to show evidence of having been opened.

(5) Guidelines. It is the responsibility of the dispensing pharmacist when preparing a patient med-pak, to take into account any applicable compendial requirements or guidelines and the physical and chemical compatibility of the dosage forms placed within each container, as well as any therapeutic incompatibilities that may attend the simultaneous administration of the drugs.

(6) Recordkeeping. In addition to any individual prescription filing requirements, a record of each patient med-pak shall be made and filed. Each record shall contain, as a minimum:

(A) the name and address of the patient;

(B) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(C) the name of the manufacturer or distributor and lot number for each drug product contained therein;

(D) information identifying or describing the design, characteristics, or specifications of the patient med-pak sufficient to allow subsequent preparation of an identical patient med-pak for the patient;

(E) the date of preparation of the patient med-pak and the beyond-use date that was assigned;

(F) any special labeling instructions; and

(G) the initials or an identification code of the dispensing pharmacist.

(7) The patient med-pak label is not required to include the initials or identification code of the dispensing pharmacist as specified in paragraph (2)(A) of this subsection if the identity of the dispensing pharmacist is recorded in the pharmacy's data processing system. The record of the identity of the dispensing pharmacist shall not be altered in the pharmacy's data processing system.

(i) Automated devices and systems in a pharmacy.

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

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

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

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

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

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

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

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

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

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

(2) Automated pharmacy dispensing systems.

(A) Authority to use automated pharmacy dispensing systems. A pharmacy may use an automated pharmacy dispensing system to fill prescription drug orders provided that:

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

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

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

(B) Automated pharmacy dispensing systems may be stocked or loaded by a pharmacist or by a pharmacy technician or pharmacy technician trainee under the supervision of a pharmacist.

(C) Quality assurance program. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall operate according to a quality assurance program of the automated pharmacy dispensing system which:

(i) requires continuous monitoring of the automated pharmacy dispensing system; and

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

(D) Policies and procedures of operation.

(i) When an automated pharmacy dispensing system is used to fill prescription drug orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall:

(I) provide for a pharmacist's review, approval, and accountability for the transmission of each original or new prescription drug order to the automated pharmacy dispensing system before the transmission is made;

(II) provide for access to the automated pharmacy dispensing system for stocking and retrieval of medications which is limited to licensed healthcare professionals or pharmacy technicians acting under the supervision of a pharmacist;

(III) require that a pharmacist checks, verifies, and documents that the correct medication and strength of bulk drugs, prepackaged containers, or manufacturer's unit of use packages were properly stocked, filled, and loaded in the automated pharmacy dispensing system prior to initiating the fill process; alternatively, an electronic verification system may be used for verification of manufacturer's unit of use packages or prepacked medication previously verified by a pharmacist;

(IV) provide for an accountability record to be maintained that documents all transactions relative to stocking and removing medications from the automated pharmacy dispensing system;

(V) require a prospective drug regimen review is conducted as specified in subsection (c)(2) of this section; and

(VI) establish and make provisions for documentation of a preventative maintenance program for the automated pharmacy dispensing system.

(ii) A pharmacy that uses an automated pharmacy dispensing system to fill prescription drug orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(E) Recovery Plan. A pharmacy that uses an automated pharmacy dispensing system to fill prescription drug orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated pharmacy dispensing system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

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

(ii) procedures for response when an automated pharmacy dispensing system is experiencing downtime; and

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

(F) Final check of prescriptions dispensed using an automated pharmacy dispensing system. For the purpose of §291.32(c)(2)(D) of this title (relating to Personnel), a pharmacist must perform the final check of all prescriptions prior to delivery to the patient to ensure that the prescription is dispensed accurately as prescribed.

(i) This final check shall be considered accomplished if:

(I) a check of the final product is conducted by a pharmacist after the automated pharmacy dispensing system has completed the prescription and prior to delivery to the patient; or

(II) the following checks are conducted:

(-a-) if the automated pharmacy dispensing system contains bulk stock drugs, a pharmacist verifies that those drugs have been accurately stocked as specified in subparagraph (D)(i)(III) of this paragraph;

(-b-) if the automated pharmacy dispensing system contains manufacturer's unit of use packages or prepackaged medication previously verified by a pharmacist, an electronic verification system has confirmed that the medications have been accurately stocked as specified in subparagraph (D)(i)(III) of this paragraph;

(-c-) a pharmacist checks the accuracy of the data entry of each original or new prescription drug order entered into the automated pharmacy dispensing system; and

(-d-) an electronic verification process is used to verify the proper prescription label has been affixed to the correct medication container, prepackaged medication or manufacturer unit of use package for the correct patient.

(ii) If the final check is accomplished as specified in clause (i)(II) of this subparagraph, the following additional requirements must be met:

(I) the dispensing process must be fully automated from the time the pharmacist releases the prescription to the automated pharmacy dispensing system until a completed, labeled prescription ready for delivery to the patient is produced;

(II) the pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated pharmacy dispensing system dispenses accurately as specified in subparagraph (C) of this paragraph;

(III) the automated pharmacy dispensing system documents and maintains:

(-a-) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in clause (i)(II) of this subparagraph; and

(-b-) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the dispensing process; and

(IV) the pharmacy establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every month rather than every twelve months as specified in subparagraph (C) of this paragraph.

(3) Automated checking device.

(A) For the purpose of §291.32(c)(2)(D) of this title, the final check of a dispensed prescription shall be considered accomplished using an automated checking device provided a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed:

(i) the drug used to fill the order is checked through the use of an automated checking device which verifies that the drug is labeled and packaged accurately; and

(ii) a pharmacist checks the accuracy of each original or new prescription drug order and is responsible for the final check of the order through the automated checking device.

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

(i) the pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient;

(ii) the pharmacy documents and maintains:

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

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

(iii) the pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly; and

(iv) the pharmacy establishes procedures to ensure that errors identified by the automated checking device may not be overridden by a pharmacy technician and must be reviewed and corrected by a pharmacist.

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

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For further information, please call: (512) 305-8010

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22 TAC §291.35

The Texas State Board of Pharmacy adopts amendments to §291.35, concerning Official Prescription Requirements. These amendments are adopted without changes to the proposed text as published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 31) and will not be republished.

The amendments update the citation reference regarding the requirement for the use of official prescriptions for Schedule II controlled substances in Class A pharmacies.

No comments were received.

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

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

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.75

The Texas State Board of Pharmacy adopts amendments to §291.75, concerning Records. These amendments are adopted with changes to the proposed text as published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 31). The Board made changes to correct a formatting error in a rule reference. The rules will be republished.

The amendments update citation references regarding outpatient records, outpatient prescription forms, and official prescriptions for Schedule II controlled substances, remove references to nalbuphine (e.g., Nubain) from the electronic recordkeeping requirements for distribution and return of controlled substances, and correct grammatical errors.

No comments were received.

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

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

§291.75. Records.

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of §291.71 of this title (relating to Purpose), §291.72 of this title (relating to Definitions), §291.73 of this title (relating to Personnel), §291.74 of this title (relating to Operational Standards), and this section contained in Institutional Pharmacy (Class C) shall be:

(A) kept by the institutional pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative, and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this subsection, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, redlined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing or direct imaging system, e.g., microfilm or microfiche, provided:

(A) the records in the alternative data retention system contain all of the information required on the manual record; and

(B) the alternative data retention system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Outpatient records.

(1) Outpatient records shall be maintained as provided in §291.34 (relating to Records), and §291.35 (relating to Official Prescription Requirements), in chapter 291, subchapter B of this title.

(2) Outpatient prescriptions, including, but not limited to, furlough and discharge prescriptions, that are written by a practitioner must be written on a form which meets the requirements of §291.34(b)(7)(A) of this title. Medication order forms or copies thereof do not meet the requirements for outpatient forms.

(3) Controlled substances listed in Schedule II must be written on an official prescription form in accordance with the Texas Controlled Substances Act, §481.075, and rules promulgated pursuant to the Texas Controlled Substances Act, unless exempted by chapter 315 of this title (relating to Controlled Substances). Outpatient prescriptions for Schedule II controlled substances that are exempted from the official prescription requirement must be manually signed by the practitioner.

(c) Patient records.

(1) Original medication orders.

(A) Each original medication order shall bear the following information:

(i) patient name and room number or identification number;

(ii) drug name, strength, and dosage form;

(iii) directions for use;

(iv) date; and

(v) signature or electronic signature of the practitioner or that of his or her authorized agent.

(B) Original medication orders shall be maintained with the medication administration records of the patients.

(2) Patient medication records (PMR). A patient medication record shall be maintained for each patient of the facility. The PMR shall contain at a minimum the following information.

(A) Patient information:

(i) patient name and room number or identification number;

(ii) gender, and date of birth or age;

(iii) weight and height;

(iv) known drug sensitivities and allergies to drugs and/or food;

(v) primary diagnoses and chronic conditions;

(vi) primary physician; and

(vii) other drugs the patient is receiving.

(B) Medication order information:

(i) date of distribution;

(ii) drug name, strength, and dosage form; and

(iii) directions for use.

(3) Controlled substances records. Controlled substances records shall be maintained as follows.

(A) All records for controlled substances shall be maintained in a readily retrievable manner.

(B) Controlled substances records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(4) Schedule II controlled substances records. Records of controlled substances listed in Schedule II shall be maintained as follows.

(A) Records of controlled substances listed in Schedule II shall be maintained separately from records of controlled substances in Schedules III, IV, and V, and all other records.

(B) An institutional pharmacy shall maintain a perpetual inventory of any controlled substance listed in Schedule II.

(C) Distribution records for controlled substances listed in Schedule II shall bear the following information:

(i) patient's name;

(ii) prescribing or attending practitioner;

(iii) name of drug, dosage form, and strength;

(iv) time and date of administration to patient and quantity administered;

(v) name, initials, or electronic signature of the individual administering the controlled substance;

(vi) returns to the pharmacy; and

(vii) waste (waste is required to be witnessed and cosigned, electronically or manually, by another individual).

(5) Floor stock records.

(A) Distribution records for Schedules II - V controlled substances floor stock shall include the following information:

(i) patient's name;

(ii) prescribing or attending practitioner;

(iii) name of controlled substance, dosage form, and strength;

(iv) time and date of administration to patient;

(v) quantity administered;

(vi) name, initials, or electronic signature of the individual administering drug;

(vii) returns to the pharmacy; and

(viii) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(B) The record required by subparagraph (A) of this paragraph shall be maintained separately from patient records.

(C) A pharmacist shall review distribution records with medication orders on a periodic basis to verify proper usage of drugs, not to exceed 30 days between such reviews.

(6) General requirements for records maintained in a data processing system.

(A) Noncompliance with data processing requirements. If a hospital pharmacy's data processing system is not in compliance with the Board's requirements, the pharmacy must maintain a manual recordkeeping system.

(B) Requirements for back-up systems. The facility shall maintain a back-up copy of information stored in the data processing system using disk, tape, or other electronic back-up system and update this back-up copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(C) Change or discontinuance of a data processing system.

(i) Records of distribution and return for all controlled substances. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains the same information as required on the audit trail printout as specified in paragraph (7)(B) of this subsection. The information on this printout shall be sorted and printed by drug name and list all distributions/returns chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(D) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(7) Data processing system maintenance of records for the distribution and return of all controlled substances to the pharmacy.

(A) Each time a controlled substance is distributed from or returned to the pharmacy, a record of such distribution or return shall be entered into the data processing system.

(B) The data processing system shall have the capacity to produce a hard copy printout of an audit trail of drug distribution and return for any strength and dosage form of a drug (by either brand or generic name or both) during a specified time period. This printout shall contain the following information:

(i) patient's name and room number or patient's facility identification number;

(ii) prescribing or attending practitioner's name;

(iii) name, strength, and dosage form of the drug product actually distributed;

(iv) total quantity distributed from and returned to the pharmacy;

(v) if not immediately retrievable via electronic image, the following shall also be included on the printout:

(I) prescribing or attending practitioner's address; and

(II) practitioner's DEA registration number, if the medication order is for a controlled substance.

(C) An audit trail printout for each strength and dosage form of the drugs distributed during the preceding month shall be produced at least monthly and shall be maintained in a separate file at the facility unless the pharmacy complies with subparagraph (D) of this paragraph. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(D) The pharmacy may elect not to produce the monthly audit trail printout if the data processing system has a workable (electronic) data retention system which can produce an audit trail of drug distribution and returns for the preceding two years. The audit trail required in this paragraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy, or other authorized local, state, or federal law enforcement or regulatory agencies.

(8) Failure to maintain records. Failure to provide records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(9) Data processing system downtime. In the event that a hospital pharmacy that uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for on-line data entry as soon as the system is available for use again.

(10) Ongoing clinical pharmacy program records. If a pharmacy has an ongoing clinical pharmacy program and allows pharmacy technicians to verify the accuracy of work performed by other pharmacy technicians, the pharmacy must have a record of the pharmacy technicians and the duties performed.

(d) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions:

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance; and

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed or distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule I or II controlled substance, the following is applicable.

(A) The pharmacy, practitioner or other registrant who is receiving the controlled substances shall issue copy 1 and copy 2 of a DEA order form (DEA 222) to the distributing pharmacy.

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222) titled TO BE FILLED IN BY SUPPLIER;

(ii) maintain copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and

(iii) forward copy 2 of the DEA order form (DEA 222) to the divisional office of the Drug Enforcement Administration.

(e) Other records. Other records to be maintained by a pharmacy:

(1) a log of the initials or identification codes which will identify pharmacy personnel by name (the initials or identification code shall be unique to ensure that each person can be identified, i.e., identical initials or identification codes cannot be used). Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

(2) copy 3 of DEA order form (DEA 222) which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(3) a hard copy of the power of attorney to sign DEA 222 order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements) except that a perpetual inventory of controlled substances listed in Schedule II may be kept in a data processing system if the data processing system is capable of producing a hard copy of the perpetual inventory on-site;

(7) hard copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) a hard copy Schedule V nonprescription register book;

(9) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(10) a hard copy of any notification required by the Texas Pharmacy Act or these sections including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA, DPS, and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in diagnosis or treatment of injury, illness, and disease.

(f) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the board. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director;

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph; and

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

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

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.121

The Texas State Board of Pharmacy adopts amendments to §291.121, concerning Remote Pharmacy Services. These amendments are adopted with changes to the proposed text as published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 35) and will be republished. The changes are to correct alphabetization of definitions found within four subsections of the rules.

The amendments provide standards and requirements for the provision of remote pharmacy services using automated storage and delivery systems, including definitions, general requirements, operational standards, and records requirements.

No comments were received.

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

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

§291.121. Remote Pharmacy Services.

(a) Remote pharmacy services using automated pharmacy systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an automated pharmacy system as outlined in §562.109 of the Texas Pharmacy Act.

(2) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings defined in the Act.

(A) Automated pharmacy system--A mechanical system that dispenses prescription drugs and maintains related transaction information.

(B) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container, or quantities of unit dosed drugs, into another cartridge or container for dispensing by a pharmacist using an automated pharmacy system.

(C) Provider pharmacy--The community pharmacy (Class A) or the institutional pharmacy (Class C) providing remote pharmacy services.

(D) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, in remote sites.

(E) Remote site--A facility not located at the same location as a Class A or Class C pharmacy, at which remote pharmacy services are provided using an automated pharmacy dispensing system.

(F) Unit dose--An amount of a drug packaged in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using an automated pharmacy system to a jail or prison operated by or for the State of Texas, a jail or prison operated by local government or a healthcare facility regulated under Chapter 142, 242, 247, or 252, Health and Safety Code, provided drugs are administered by a licensed healthcare professional working in the jail, prison, or healthcare facility.

(B) A provider pharmacy may only provide remote pharmacy services using an automated pharmacy system to inpatients of the remote site.

(C) A provider pharmacy may provide remote pharmacy services at more than one remote site.

(D) Before providing remote pharmacy services, the automated pharmacy system at the remote site must be tested by the provider pharmacy and found to dispense accurately. The provider pharmacy shall make the results of such testing available to the board upon request.

(E) A provider pharmacy which is licensed as an institutional (Class C) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records for Class A (Community) Pharmacies) and this section.

(F) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the automated pharmacy system located at the remote site including supervision of the automated pharmacy system and compliance with this section.

(G) A pharmacist from the provider pharmacy shall be accessible at all times to respond to patient's or other health professionals' questions and needs pertaining to drugs dispensed through the use of the automated pharmacy system. Such access may be through a 24 hour pager service or telephone which is answered 24 hours a day.

(4) Operational standards.

(A) Application for permission to provide pharmacy services using an automated pharmacy system.

(i) A Class A or Class C Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an automated pharmacy system.

(ii) Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

(iii) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the remote site.

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of:

(I) a remote site where an automated pharmacy system is operated by the pharmacy; or

(II) a remote pharmacy service at a remote site.

(ii) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site if controlled substances are maintained within an automated pharmacy system at the facility.

(iii) A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 (relating to Notifications) of this title.

(C) Environment/Security.

(i) A provider pharmacy shall only store drugs at a remote site within an automated pharmacy system which is locked by key, combination or other mechanical or electronic means so as to prohibit access by unauthorized personnel.

(ii) An automated pharmacy system shall be under the continuous supervision of a provider pharmacy pharmacist. To qualify as continuous supervision, the pharmacist is not required to be physically present at the site of the automated pharmacy system if the system is supervised electronically by a pharmacist.

(iii) Automated pharmacy systems shall have adequate security and procedures to:

(I) comply with federal and state laws and regulations; and

(II) maintain patient confidentiality.

(iv) Access to the automated pharmacy system shall be limited to pharmacists or personnel who:

(I) are designated in writing by the pharmacist-in-charge; and

(II) have completed documented training concerning their duties associated with the automated pharmacy system.

(v) Drugs shall be stored in compliance with the provisions of §291.15 of this title (relating to Storage of Drugs) and §291.33(f)(2) of this title including the requirements for temperature and handling of outdated drugs.

(D) Prescription dispensing and delivery.

(i) Drugs shall only be dispensed at a remote site through an automated pharmacy system after receipt of an original prescription drug order by a pharmacist at the provider pharmacy in a manner authorized by §291.34(b) of this title.

(ii) A pharmacist at the provider pharmacy shall control all operations of the automated pharmacy system and approve the release of the initial dose of a prescription drug order. Subsequent doses from an approved prescription drug order may be removed from the automated medication system after this initial approval. Any change made in the prescription drug order shall require a new approval by a pharmacist to release the drug.

(iii) A pharmacist at the provider pharmacy shall conduct a drug regimen review as specified in §291.33(c) of this title prior to releasing a prescription drug order to the automated pharmacy system.

(iv) Drugs dispensed by the provider pharmacy through an automated pharmacy system shall comply with the labeling or labeling alternatives specified in §291.33(c) of this title.

(v) An automated pharmacy system used to meet the emergency medication needs for residents of a remote site must comply with the requirements for emergency medication kits in subsection (b) of this section.

(E) Drugs.

(i) Drugs for use in an automated pharmacy system shall be packaged in the original manufacturer's container or be prepackaged in the provider pharmacy and labeled in compliance with the board's prepackaging requirements for the class of pharmacy.

(ii) Drugs dispensed from the automated pharmacy system may be returned to the pharmacy for reuse provided the drugs are in sealed, tamper evident packaging which has not been opened.

(F) Stocking an automated pharmacy system.

(i) Stocking of drugs in an automated pharmacy system shall be completed by a pharmacist, pharmacy technician, or pharmacy technician trainee under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

(ii) If the automated pharmacy system uses removable cartridges or containers to hold drugs, the prepackaging of the cartridges or containers shall occur at the provider pharmacy unless provided by an FDA approved repackager. The prepackaged cartridges or

containers may be sent to the remote site to be loaded into the machine by personnel designated by the pharmacist-in-charge provided:

(I) a pharmacist verifies the cartridge or container has been properly filled and labeled;

(II) the individual cartridges or containers are transported to the remote site in a secure, tamper-evident container; and

(III) the automated pharmacy system uses barcoding, microchip, or other technologies to ensure that the containers are accurately loaded in the automated pharmacy system.

(iii) All drugs to be stocked in the automated pharmacy system shall be delivered to the remote site by the provider pharmacy.

(G) Quality assurance program. A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall operate according to a written program for quality assurance of the automated pharmacy system which:

(i) requires continuous supervision of the automated pharmacy system; and

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

(H) Policies and procedures of operation.

(i) A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) a current list of the name and address of the pharmacist-in-charge and personnel designated by the pharmacist-in-charge to have access to the drugs stored in the automated pharmacy system;

(II) duties which may only be performed by a pharmacist;

(III) a copy of the portion of the written contract or agreement between the pharmacy and the facility which outlines the services to be provided and the responsibilities and accountabilities of each party relating to the operation of the automated pharmacy system in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

(IV) date of last review/revision of the policy and procedure manual; and

(V) policies and procedures for:

(-a-) security;

(-b-) operation of the automated pharmacy system;

(-c-) preventative maintenance of the automated pharmacy system;

(-d-) sanitation;

(-e-) storage of drugs;

(-f-) dispensing;

(-g-) supervision;

(-h-) drug procurement;

(-i-) receiving of drugs;

(-j-) delivery of drugs; and

(-k-) record keeping.

(ii) A pharmacy that provides pharmacy services through an automated pharmacy system at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services using an automated pharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of the automated pharmacy system to dispense prescription drugs. The written plan for recovery shall include:

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

(II) procedures for response when an automated pharmacy system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The provider pharmacy shall maintain original prescription drug orders for drugs dispensed from an automated pharmacy system in compliance with §291.34(b) of this title.

(iii) if prescription drug records are maintained in a data processing system, the system shall have a workable (electronic) data retention system which can produce a separate audit trail of drug usage by the provider pharmacy and each remote site for the preceding two years as specified in §291.34(e) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Records of dispensing. Dispensing records for a prescription drug order shall be maintained by the provider pharmacy in the manner required by §291.34(d) or (e) of this title.

(D) Transaction information.

(i) The automated pharmacy system shall electronically record all transactions involving drugs stored in, removed, or dispensed from the system.

(ii) Records of dispensing from an automated pharmacy system for a patient shall be maintained by the providing pharmacy and include the:

(I) identity of the system accessed;

(II) identification of the individual accessing the system;

(III) date of transaction;

(IV) name, strength, dosage form, and quantity of drug accessed; and

(V) name of the patient for whom the drug was accessed.

(iii) Records of stocking or removal from an automated pharmacy system shall be maintained by the pharmacy and include the:

(I) date;

(II) name, strength, dosage form, and quantity of drug stocked or removed;

(III) name, initials, or identification code of the person stocking or removing drugs from the system;

(IV) name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled;

(E) Patient medication records. Patient medication records shall be created and maintained by the provider pharmacy in the manner required by §291.34(c) of this title.

(F) Inventory.

(i) A provider pharmacy shall:

(I) keep a record of all drugs sent to and returned from a remote site separate from the records of the provider pharmacy and from any other remote site's records; and

(II) keep a perpetual inventory of controlled substances and other drugs required to be inventoried under §291.17 of this title (relating to Inventory Requirements for All Classes of Pharmacies) that are received and dispensed or distributed from each remote site.

(ii) As specified in §291.17 of this title, a provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

(I) The inventory of each remote site and the provider pharmacy shall be taken on the same day.

(II) The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs of the provider pharmacy.

(b) Remote pharmacy services using emergency medication kits.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an emergency medication kit as outlined in §562.108 of the Texas Pharmacy Act.

(2) Definitions. The following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings defined in the Act or §291.31 of this title.

(A) Automated pharmacy system--A mechanical system that dispenses prescription drugs and maintains related transaction information.

(B) Emergency medication kits--Controlled substances and dangerous drugs maintained by a provider pharmacy to meet the emergency medication needs of a resident:

(i) at an institution licensed under Chapter 242 or 252, Health and Safety Code; or

(ii) at an institution licensed under Chapter 242, Health and Safety Code and that is a veterans home as defined by the §164.002, Natural Resources Code, if the provider pharmacy is a United States Department of Veterans Affairs pharmacy or another federally operated pharmacy.

(C) Prepackaging--The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container, or quantities of unit dosed drugs, into another cartridge or container for dispensing by a pharmacist using an emergency medication kit.

(D) Provider pharmacy--The community pharmacy (Class A), the institutional pharmacy (Class C), the non-resident (Class E) pharmacy located not more than 20 miles from an institution licensed under Chapter 242 or 252, Health and Safety Code, or the United States Department of Veterans Affairs pharmacy or another federally operated pharmacy providing remote pharmacy services.

(E) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, in remote sites.

(F) Remote site--A facility not located at the same location as a Class A, Class C, Class E pharmacy or a United States Department of Affairs pharmacy or another federally operated pharmacy, at which remote pharmacy services are provided using an emergency medication kit.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using an emergency medication kit to an institution regulated under Chapter 242, or 252, Health and Safety Code.

(B) A provider pharmacy may provide remote pharmacy services at more than one remote site.

(C) A provider pharmacy shall not place an emergency medication kit in a remote site which already has a kit from another provider pharmacy except as provided by paragraph (4)(B)(iii) of this subsection.

(D) A provider pharmacy which is licensed as an institutional (Class C) or a non-resident (Class E) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title and this section.

(E) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the emergency medication kit located at the remote site including supervision of the emergency medication kit and compliance with this section.

(4) Operational standards.

(A) Application for permission to provide pharmacy services using an emergency medication kit.

(i) A Class A, Class C, or Class E Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an emergency medication kit.

(ii) Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

(iii) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the remote site.

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of:

(I) a remote site where an emergency medication kit is operated by the pharmacy; or

(II) a remote pharmacy service at a remote site.

(ii) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site if controlled substances are maintained within an emergency medication kit at the facility.

(iii) If more than one provider pharmacy provides an emergency kit to a remote site, the provider pharmacies must enter into a written agreement as to the emergency medications supplied by each pharmacy. The provider pharmacies shall not duplicate drugs stored in the emergency medication kits. The written agreement shall include reasons why an additional pharmacy is required to meet the emergency medication needs of the residents of the institution.

(iv) A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 of this title.

(C) Environment/Security.

(i) Emergency medication kits shall have adequate security and procedures to:

(I) prohibit unauthorized access;

(II) comply with federal and state laws and regulations; and

(III) maintain patient confidentiality.

(ii) Access to the emergency medication kit shall be limited to pharmacists and licensed healthcare personnel employed by the facility.

(iii) Drugs shall be stored in compliance with the provisions of §291.15 and §291.33(f)(2) of this title including the requirements for temperature and handling outdated drugs.

(D) Prescription dispensing and delivery.

(i) Drugs in the emergency medication kit shall be accessed for administration to meet the emergency medication needs of a resident of the remote site pursuant to an order from a practitioner. The prescription drug order for the drugs used from the emergency medication kit shall be forwarded to the provider pharmacy in a manner authorized by §291.34(b) of this title.

(ii) The remote site shall notify the provider pharmacy of each entry into an emergency medication kit. Such notification shall meet the requirements of paragraph (5)(D)(ii) of this subsection.

(E) Drugs.

(i) The contents of an emergency medication kit:

(I) may consist of dangerous drugs and controlled substances; and

(II) shall be determined by the consultant pharmacist, pharmacist-in-charge of the provider pharmacy, medical director, and the director of nurses and limited to those drugs necessary to meet the resident's emergency medication needs. For the purpose of this subsection, this shall mean a situation in which a drug cannot be supplied by a pharmacy within a reasonable time period.

(ii) When deciding on the drugs to be placed in the emergency medication kit, the consultant pharmacist, pharmacist-in-charge of the provider pharmacy, medical director, and the director of nurses must determine, select, and record a prudent number of drugs for potential emergency incidents based on:

(I) clinical criteria applicable to each facility's demographics;

(II) the facility's census; and

(III) the facility's healthcare environment.

(iii) A current list of the drugs stored in each remote site's emergency medication kit shall be maintained by the provider pharmacy and a copy kept with the emergency medication kit.

(iv) An automated pharmacy system may be used as an emergency medication kit provided the system limits emergency access to only those drugs approved for the emergency medication kit.

(v) Drugs for use in an emergency medication kit shall be packaged in the original manufacturer's container or prepackaged in the provider pharmacy and labeled in compliance with the board's prepackaging requirements for the class of pharmacy.

(F) Stocking emergency medication kits.

(i) Stocking of drugs in an emergency medication kit shall be completed at the provider pharmacy or remote site by a pharmacist, pharmacy technician, or pharmacy technician trainee under the direct supervision of a pharmacist, except as provided in clause (ii) of this subparagraph.

(ii) If the emergency medication kit is an automated pharmacy system which uses bar-coding, microchip, or other technologies to ensure that the containers or unit dose drugs are accurately loaded, the prepackaging of the containers or unit dose drugs shall occur at the provider pharmacy unless provided by a FDA approved repackager. The prepackaged containers or unit dose drugs may be sent to the remote site to be loaded into the machine by personnel designated by the pharmacist-in-charge provided:

(I) a pharmacist verifies the container or unit dose drug has been properly filled and labeled;

(II) the individual containers or unit dose drugs are transported to the remote site in a secure, tamper-evident container; and

(III) the automated pharmacy system uses bar-coding, microchip, or other technologies to ensure that the containers or unit dose drugs are accurately loaded in the automated pharmacy system.

(iii) All drugs to be stocked in the emergency medication kit shall be delivered to the remote site by the provider pharmacy.

(G) Policies and procedures of operation.

(i) A provider pharmacy that provides pharmacy services through an emergency medication kit at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) duties which may only be performed by a pharmacist;

(II) a copy of the written contract or agreement between the pharmacy and the facility which outlines the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract in compliance with federal and state laws and regulations;

(III) date of last review/revision of the policy and procedure manual; and

(IV) policies and procedures for:

(-a-) security;

(-b-) operation of the emergency medication kit;

(-c-) preventative maintenance of the automated pharmacy system if the emergency medication kit is an automated pharmacy system;

(-d-) sanitation;

(-e-) storage of drugs;

(-f-) dispensing;

(-g-) supervision;

(-h-) drug procurement;

(-i-) receiving of drugs;

(-j-) delivery of drugs; and

(-k-) record keeping.

(ii) A pharmacy that provides pharmacy services through an emergency medication kit at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services using an emergency medication kit which is an automated pharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of the automated pharmacy system to provide emergency medications. The written plan for recovery shall include:

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

(II) procedures for response when an automated pharmacy system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The provider pharmacy shall maintain original prescription drug orders for drugs dispensed from an emergency medication kit in compliance with §291.34(b) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Records of dispensing. Dispensing records for a prescription drug order shall be maintained by the provider pharmacy in the manner required by §291.34(d) or (e) of this title.

(D) Transaction information.

(i) A prescription drug order shall be maintained by the provider pharmacy as the record of removal of a drug from an emergency medication kit for administration to a patient.

(ii) The remote site shall notify the provider pharmacy electronically or in writing of each entry into an emergency medication kit. Such notification may be included on the prescription drug order or a separate document and shall include the name, strength, and quantity of the drug removed, the time of removal, and the name of the person removing the drug.

(iii) A separate record of stocking, removal, or dispensing for administration from an emergency medication kit shall be maintained by the pharmacy and include the:

(I) date;

(II) name, strength, dosage form, and quantity of drug stocked, removed, or dispensed for administration;

(III) name, initials, or identification code of the person stocking, removing, or dispensing for administration, drugs from the system;

(IV) name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled; and

(V) unique prescription number assigned to the prescription drug order when the drug is administered to the patient.

(E) Inventory.

(i) A provider pharmacy shall:

(I) keep a record of all drugs sent to and returned from a remote site separate from the records of the provider pharmacy and from any other remote site's records; and

(II) keep a perpetual inventory of controlled substances and other drugs required to be inventoried under §291.17 of this title, that are received and dispensed or distributed from each remote site.

(ii) As specified in §291.17 of this title, a provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

(I) The inventory of each remote site and the provider pharmacy shall be taken on the same day.

(II) The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs of the provider pharmacy.

(c) Remote pharmacy services using telepharmacy systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a healthcare facility that is not at the same location as a Class A or Class C pharmacy through a telepharmacy system as outlined in §562.110 of the Texas Pharmacy Act.

(2) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings defined in the Act or §291.31 of this title.

(A) Provider pharmacy--

(i) a Class A pharmacy that provides pharmacy services through a telepharmacy system at a remote dispensing site or at a healthcare facility that is regulated by this state or the United States; or

(ii) a Class C pharmacy that provides pharmacy services though a telepharmacy system at a healthcare facility that is regulated by this state or the United States.

(B) Remote dispensing site--a location licensed as a telepharmacy that is authorized by a provider pharmacy through a telepharmacy system to store and dispense prescription drugs and devices, including dangerous drugs and controlled substances.

(C) Remote healthcare site--a healthcare facility regulated by this state or the United States that is a:

(i) rural health clinic regulated under 42 U.S.C. Section 1395x(aa);

(ii) health center as defined by 42 U.S.C. Section 254b;

(iii) healthcare facility located in a medically underserved area as determined by the United States Department of Health and Human Services; or

(iv) healthcare facility located in a health professional shortage area as determined by the United States Department of Health and Human Services.

(D) Remote pharmacy service--The provision of pharmacy services, including the storage and dispensing of prescription drugs, drug regimen review, and patient counseling, at a remote site.

(E) Remote site--a remote healthcare site or a remote dispensing site.

(F) Still image capture--A specific image captured electronically from a video or other image capture device.

(G) Store and forward--A video or still image record which is saved electronically for future review.

(H) Telepharmacy system--A system that monitors the dispensing of prescription drugs and provides for related drug use review and patient counseling services by an electronic method which shall include the use of the following types of technology:

(i) audio and video;

(ii) still image capture; and

(iii) store and forward.

(3) General requirements.

(A) A provider pharmacy may provide remote pharmacy services using a telepharmacy system at a:

(i) remote healthcare site; or;

(ii) remote dispensing site.

(B) A provider pharmacy may not provide remote pharmacy services at a remote healthcare site if a Class A or Class C pharmacy that dispenses prescription drug orders to out-patients is located in the same community. For the purposes of this subsection a community is defined as:

(i) the census tract in which the remote site is located, if the remote site is located in a Metropolitan Statistical Area (MSA) as defined by the United States Census Bureau in the most recent U.S. Census; or

(ii) within 10 miles of the remote site, if the remote site is not located in a MSA.

(C) A provider pharmacy may not provide remote pharmacy services at a remote dispensing site if a Class A pharmacy is located within 22 miles by road of the remote dispensing site.

(D) If a Class A or Class pharmacy is established in a community in which a remote healthcare site has been located, the remote healthcare site may continue to operate.

(E) If a Class A pharmacy is established within 22 miles by road of a remote dispensing site that is currently operating, the remote dispensing site may continue to operate at that location.

(F) Before providing remote pharmacy services, the telepharmacy system at the remote site must be tested by the provider pharmacy and found to operate properly. The provider pharmacy shall make the results of such testing available to the board upon request.

(G) A provider pharmacy which is licensed as a Class C pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title and this section.

(H) A provider pharmacy can only provide pharmacy services at no more than two remote dispensing sites.

(4) Personnel.

(A) The pharmacist-in-charge of the provider pharmacy is responsible for all operations at the remote site including supervision of the telepharmacy system and compliance with this section.

(B) The provider pharmacy shall have sufficient pharmacists on duty such that each pharmacist may supervise no more two remote sites that are simultaneously open to provide services.

(C) The following duties shall be performed only by a pharmacist at the provider pharmacy:

(i) receiving an oral prescription drug order;

(ii) interpreting the prescription drug order;

(iii) verifying the accuracy of prescription data entry;

(iv) selecting the drug product to be stored and dispensed at the remote site;

(v) interpreting the patient's medication record and conducting a drug regimen review;

(vi) authorizing the telepharmacy system to print a prescription label at the remote site;

(vii) performing the final check of the dispensed prescription to ensure that the prescription drug order has been dispensed accurately as prescribed; and

(viii) counseling the patient.

(5) Operational standards.

(A) Application to provide remote pharmacy services using a telepharmacy system.

(i) A Class A or class C Pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using a telepharmacy system.

(ii) Such application shall be resubmitted every two years in conjunction with the renewal of the provider pharmacy's license.

(iii) On approval of the application, the provider pharmacy will be sent a license for the remote site, which must be displayed at the remote site.

(iv) If the average number of prescriptions dispensed each day at a remote dispensing site is open for business is more than 125 prescriptions, as calculated each calendar year, the remote dispensing site shall apply for a Class A pharmacy license as specified in §291.1 of this title (relating to Pharmacy License Application).

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service, or closure of a remote site where a telepharmacy system is operated by the pharmacy.

(ii) A provider pharmacy shall comply with appropriate federal and state controlled substance registrations for each remote site, if controlled substances are maintained.

(iii) A provider pharmacy shall file a change of location and/or name of a remote site as specified in §291.3 of this title.

(C) Environment/Security.

(i) A remote site shall be under the continuous supervision of a provider pharmacy pharmacist at all times the site is open to provide pharmacy services. To qualify as continuous supervision, the pharmacist is not required to be physically present at the remote site and shall supervise electronically through the use of the following types of technology:

(I) audio and video;

(II) still image capture; and

(III) store and forward.

(ii) Drugs shall be stored in compliance with the provisions of §291.15 and §291.33(f)(2) of this title including the requirements for temperature and handling of outdated drugs.

(iii) Drugs for use in the telepharmacy system at a remote healthcare site shall be stored in an area that is:

(I) separate from any other drugs used by the healthcare facility; and

(II) locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized personnel.

(iv) Drugs for use in the telepharmacy system at a remote dispensing site shall be stored in an area that is locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized personnel.

(v) Access to the area where drugs are stored at the remote site and operation of the telepharmacy system shall be limited to:

(I) pharmacists employed by the provider pharmacy;

(II) licensed healthcare providers, if the remote site is a remote healthcare site; and

(III) pharmacy technicians;

(vi) Individuals authorized to access the remote site and operate the telepharmacy system shall:

(I) be designated in writing by the pharmacist-in-charge; and

(II) have completed documented training concerning their duties associated with the telepharmacy pharmacy system.

(vii) Remote sites shall have adequate security and procedures to:

(I) comply with federal and state laws and regulations; and

(II) maintain patient confidentiality.

(D) Prescription dispensing and delivery.

(i) A pharmacist at the provider pharmacy shall conduct a drug regimen review as specified in §291.33(c) of this title prior to delivery of the dispensed prescription to the patient or patient's agent.

(ii) The dispensed prescription shall be labeled at the remote site with the information specified in §291.33(c) of this title.

(iii) A pharmacist at the provider pharmacy shall perform the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed. This final check shall be accomplished through a visual check using electronic methods.

(iv) A pharmacist at the provider pharmacy shall counsel the patient or patient's agent as specified in §291.33(c) of this title. This counseling may be performed using electronic methods. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(v) If the remote site has direct access to the provider pharmacy's data processing system, only a pharmacist or pharmacy technician may enter prescription information into the data processing system.

(vi) Drugs which require reconstitution through the addition of a specified amount of water may be dispensed by the remote site only if a pharmacy technician, pharmacy technician trainee, or licensed healthcare provider reconstitutes the product.

(vii) A telepharmacy system located at a remote dispensing site may not dispense a schedule II controlled substance.

(viii) Drugs dispensed at the remote site through a telepharmacy system shall only be delivered to the patient or patient's agent at the remote site.

(E) Quality assurance program. A pharmacy that provides remote pharmacy services through a telepharmacy system at a remote site shall operate according to a written program for quality assurance of the telepharmacy system which:

(i) requires continuous supervision of the telepharmacy system at all times the site is open to provide remote pharmacy services; and

(ii) establishes mechanisms and procedures to routinely test the operation of the telepharmacy system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(F) Policies and procedures.

(i) A pharmacy that provides pharmacy services through a telepharmacy system at a remote site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(I) a current list of the name and address of the pharmacist-in-charge and personnel designated by the pharmacist-in-charge to have:

(-a-) have access to the area where drugs are stored at the remote site; and

(-b-) operate the telepharmacy system;

(II) duties which may only be performed by a pharmacist;

(III) if the remote site is located at a remote healthcare site, a copy of the written contact or agreement between the provider pharmacy and the healthcare facility which outlines the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract or agreement in compliance with federal and state laws and regulations;

(IV) date of last review/revision of policy and procedure manual; and

(V) policies and procedures for:

(-a-) security;
(-b-) operation of the telepharmacy system;
(-c-) sanitation;
(-d-) storage of drugs;
(-e-) dispensing;
(-f-) supervision;
(-g-) drug and/or device procurement;
(-h-) receiving of drugs and/or devices;
(-i-) delivery of drugs and/or devices; and
(-j-) recordkeeping

(ii) A pharmacy that provides remote pharmacy services through a telepharmacy system at a remote site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services through a telepharmacy system shall maintain a written plan for recovery from an event which interrupts the ability of a pharmacist to electronically supervise the telepharmacy system and the dispensing of prescription drugs at the remote site. The written plan for recovery shall include:

(I) a statement that prescription drugs shall not be dispensed at the remote site, if a pharmacist is not able to electronically supervise the telepharmacy system and the dispensing of prescription drugs;

(II) procedures for response when a telepharmacy system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(6) Additional operational standards for remote dispensing sites.

(A) A pharmacist employed by a provider pharmacy shall make at least monthly on-site visits to a remote site. The remote site shall maintain documentation of the visit.

(B) A pharmacist employed by a provider pharmacy shall be physically present at a remote dispensing site when the pharmacist is providing services requiring the physical presence of the pharmacist, including immunizations.

(C) A remote dispensing site shall be staffed by an on-site pharmacy technician who is under the continuous supervision of a pharmacist employed by the provider pharmacy.

(D) All pharmacy technicians at a remote dispensing site shall be counted for the purpose of establishing the pharmacist-pharmacy technician ratio of the provider pharmacy which, notwithstanding Section 568.006 of the Act, may not exceed three pharmacy technicians for each pharmacist providing supervision.

(E) A pharmacy technician working at a remote dispensing site must:

(i) have worked at least one year at a retail pharmacy during the three years preceding the date the pharmacy technician begins working at the remote dispensing site; and

(ii) have completed a training program on the proper use of a telepharmacy system.

(F) A pharmacy technician at a remote dispensing site may not perform sterile or nonsterile compounding. However, a pharmacy technician may prepare commercially available medications for dispensing, including the reconstitution of orally administered powder antibiotics.

(7) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) accessible by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The remote site shall maintain original prescription drug orders for medications dispensed from a remote site using a telepharmacy system in the manner required by §291.34(b) of this title and the provider pharmacy shall have electronic access to all prescription records.

(iii) If prescription drug records are maintained in a data processing system, the system shall have a workable (electronic) data retention system which can produce a separate audit trail of drug usage by the provider pharmacy and by each remote site for the preceding two years as specified in §291.34(e) of this title.

(B) Prescriptions. Prescription drug orders shall meet the requirements of §291.34(b) of this title.

(C) Patient medication records. Patient medication records shall be created and maintained at the remote site or provider pharmacy in the manner required by §291.34(c) of this title. If such records are maintained at the remote site, the provider pharmacy shall have electronic access to those records.

(D) Inventory.

(i) A provider pharmacy shall:

(I) keep a record of all drugs ordered and dispensed by a remote site separate from the records of the provider pharmacy and from any other remote site's records;

(II) keep a perpetual inventory of all controlled substances that are received and dispensed or distributed from each remote site. The perpetual inventory shall be reconciled, by a pharmacist employed by the provider pharmacy, at least monthly.

(ii) As specified in §291.17 of this title. A provider pharmacy shall conduct an inventory at each remote site. The following is applicable to this inventory.

(I) The inventory of each remote site and the provider pharmacy shall be taken on the same day.

(II) The inventory of each remote site shall be included with, but listed separately from, the drugs of other remote sites and separately from the drugs at the provider pharmacy.

(III) A copy of the inventory of the remote site shall be maintained at the remote site.

(d) Remote pharmacy services using automated storage and delivery systems.

(1) Purpose. The purpose of this section is to provide standards for the provision of pharmacy services by a Class A or Class C pharmacy in a facility that is not at the same location as the Class A or Class C pharmacy through an automated storage and delivery system.

(2) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings defined in the Act.

(A) Automated storage and delivery system--A mechanical system that delivers dispensed prescription drugs to patients at a remote delivery site and maintains related transaction information.

(B) Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(C) Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(D) Provider pharmacy--The community pharmacy (Class A) or the institutional pharmacy (Class C) providing remote pharmacy services.

(E) Remote delivery site--A location at which remote pharmacy services are provided using an automated storage and delivery system.

(F) Remote pharmacy service--The provision of pharmacy services, including the storage and delivery of prescription drugs, in remote delivery sites.

(3) General requirements for a provider pharmacy to provide remote pharmacy services using an automated storage and delivery system to deliver a previously verified prescription that is dispensed by the provider pharmacy to a patient or patient's agent.

(A) The pharmacist-in-charge of the provider pharmacy is responsible for all pharmacy operations involving the automated storage and delivery system located at the remote delivery site including supervision of the automated storage and delivery system and compliance with this section.

(B) The patient or patient's agent shall receive counseling via a direct link to audio or video communication by a Texas licensed pharmacist who has access to the complete patient medication record (patient profile) maintained by the provider pharmacy prior to the release of any new prescription released from the system.

(C) A pharmacist shall be accessible at all times to respond to patients' or other health professionals' questions and needs pertaining to drugs delivered through the use of the automated storage and delivery system. Such access may be through a 24 hour pager service or telephone which is answered 24 hours a day.

(D) The patient or patient's agent shall be given the option whether to use the system.

(E) An electronic notice shall be provided to the patient or patient's agent at the remote delivery site with the following information:

(i) the name and address of the pharmacy that verified the previously dispensed prescription; and

(ii) a statement that a pharmacist is available 24 hours a day, 7 days a week through the use of telephonic communication.

(F) Drugs stored in the automated storage and distribution system shall be stored at proper temperatures, as defined in the USP/NF and §291.15 of this title (relating to Storage of Drugs).

(G) A provider pharmacy may only provide remote pharmacy services using an automated storage and delivery system to patients at a board-approved remote delivery site.

(H) A provider pharmacy may provide remote pharmacy services at more than one remote delivery site.

(I) Before providing remote pharmacy services, the automated storage and delivery system at the remote delivery site must be tested by the provider pharmacy and found to deliver accurately. The provider pharmacy shall make the results of such testing available to the board upon request.

(J) A provider pharmacy which is licensed as an institutional (Class C) pharmacy is required to comply with the provisions of §§291.31 - 291.34 of this title (relating to Definitions, Personnel, Operational Standards, and Records for Class A (Community) Pharmacies) and this section.

(4) Operational standards.

(A) Application to provide remote pharmacy services using an automated storage and delivery system.

(i) A community (Class A) or institutional (Class C) pharmacy shall file a completed application containing all information required by the board to provide remote pharmacy services using an automated storage and delivery system.

(ii) Such application shall be resubmitted every two years in conjunction with the application for renewal of the provider pharmacy's license.

(iii) Upon approval of the application, the provider pharmacy will be sent a certificate which must be displayed at the provider pharmacy.

(B) Notification requirements.

(i) A provider pharmacy shall notify the board in writing within ten days of a discontinuance of service.

(ii) A provider pharmacy shall comply with appropriate controlled substance registrations for each remote delivery site if dispensed controlled substances are maintained within an automated storage and delivery system at the facility.

(iii) A provider pharmacy shall file an application for change of location and/or name of a remote delivery site as specified in §291.3 of this title (relating to Notifications).

(C) Environment/Security.

(i) A provider pharmacy shall only store dispensed drugs at a remote delivery site within an automated storage and delivery

system which is locked by key, combination or other mechanical or electronic means so as to prohibit access by unauthorized personnel.

(ii) Access to the automated storage and delivery system shall be limited to pharmacists, and pharmacy technicians or pharmacy technician trainees under the direct supervision of a pharmacist who:

(I) are designated in writing by the pharmacist-in-charge; and

(II) have completed documented training concerning their duties associated with the automated storage and delivery system.

(iii) Drugs shall be stored in compliance with the provisions of §291.15 (relating to Storage of Drugs) and §291.33(c)(8) (relating to Returning Undelivered Medication to Stock) of this title, including the requirements for temperature and the return of undelivered medication to stock.

(iv) the automated storage and delivery system must have an adequate security system, including security camera(s), to prevent unauthorized access and to maintain patient confidentiality.

(D) Stocking an automated storage and delivery system. Stocking of dispensed prescriptions in an automated storage and delivery system shall be completed under the supervision of a pharmacist.

(E) Quality assurance program. A pharmacy that provides pharmacy services through an automated storage and delivery system at a remote delivery site shall operate according to a written program for quality assurance of the automated storage and delivery system which:

(i) requires continuous supervision of the automated storage and delivery system; and

(ii) establishes mechanisms and procedures to routinely test the accuracy of the automated storage and delivery system at a minimum of every six months and whenever any upgrade or change is made to the system and documents each such activity.

(F) Policies and procedures of operation.

(i) A pharmacy that provides pharmacy services through an automated storage and delivery system at a remote delivery site shall operate according to written policies and procedures. The policy and procedure manual shall include, but not be limited to, the following:

(ii) A pharmacy that provides pharmacy services through an automated storage and delivery system at a remote delivery site shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(iii) A pharmacy providing remote pharmacy services using an automated storage and delivery system shall maintain a written plan for recovery from an event which interrupts the ability of the automated storage and delivery system to deliver dispense prescription drugs. The written plan for recovery shall include:

(I) planning and preparation for maintaining pharmacy services when an automated storage and delivery system is experiencing downtime;

(II) procedures for response when an automated storage and delivery system is experiencing downtime; and

(III) procedures for the maintenance and testing of the written plan for recovery.

(5) Records.

(A) Maintenance of records.

(i) Every record required under this section must be:

(I) kept by the provider pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(II) supplied by the provider pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(ii) The provider pharmacy shall have a workable (electronic) data retention system which can produce a separate audit trail of drug delivery and retrieval transactions at each remote delivery site for the preceding two years.

(B) Transaction information.

(i) The automated storage and delivery system shall electronically record all transactions involving drugs stored in, removed, or delivered from the system.

(ii) Records of delivery from an automated storage and delivery system for a patient shall be maintained by the provider pharmacy and include the:

(I) identity of the system accessed;

(II) identification of the individual accessing the system;

(III) date of transaction;

(IV) prescription number, drug name, strength, dosage form;

(V) number of prescriptions retrieved;

(VI) name of the patient for whom the prescription was retrieved;

(VII) name of prescribing practitioner; and

(VIII) name of pharmacist responsible for consultation with the patient, if required, and documentation that the consultation was performed.

(iii) Records of stocking or removal from an automated storage and delivery system shall be maintained by the pharmacy and include the:

(I) date;

(II) prescription number;

(III) name of the patient;

(IV) drug name;

(V) number of dispensed prescription packages stocked or removed;

(VI) name, initials, or identification code of the person stocking or removing dispensed prescription packages from the system; and

(VII) name, initials, or identification code of the pharmacist who checks and verifies that the system has been accurately filled;

(C) the pharmacy shall make the automated storage and delivery system and any records of the system, including testing records, available for inspection by the board; and

(D) the automated storage and delivery system records a digital image of the individual accessing the system to pick-up a prescription and such record is maintained by the pharmacy for two years.

The agency certifies that legal counsel has reviewed the 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 20, 2019.

TRD-201900614
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: March 12, 2019
Proposal publication date: January 4, 2019
For further information, please call: (512) 305-8010

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CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.12

The Texas State Board of Pharmacy adopts amendments to §315.12, concerning Schedule III through V Prescription Forms. These amendments are adopted without changes to the proposed text as published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 52) and will not be republished.

The amendments correct a reference to the agency responsible for issuing a controlled substances registration number to the United States Drug Enforcement Administration.

No comments were received.

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

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

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

Filed with the Office of the Secretary of State on February 20, 2019.

TRD-201900615
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Effective date: March 12, 2019
Proposal publication date: January 4, 2019
For further information, please call: (512) 305-8010

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.9

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §463.9, Licensed Specialist in School Psychology, without changes to the proposed text published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 8000). The amendment will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment is necessary to repeal language that has been superseded. The adopted amendment is also necessary to ensure the agency complies with its mission and statutory authority by prohibiting the unlicensed practice of school psychology. These changes will ensure that unlicensed individuals are prohibited from circumventing the protections afforded by licensure by filing an application, practicing during the pendency of that application, and then simply reapplying after the application has expired, thereby renewing their authority to practice without a license under the provisions of this rule.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on February 25, 2019.

TRD-201900655
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 17, 2019
Proposal publication date: December 14, 2019
For further information, please call: (512) 305-7700

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22 TAC §463.11

The Texas State Board of Examiners of Psychologists adopts the amendment to §463.11, Licensed Psychologists without changes to the proposed text published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 8003) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment is necessary because subsection (c)(1) is duplicative of the requirement set out in subsection (a)(1).

The adopted amendment will also serve to clarify the provisional licensure requirement. Lastly, the adopted amendment will also serve to ensure those applicants who completed their doctoral degree prior to September 1, 2017, but who did not also complete a formal internship within their degree program, are not precluded from full licensure.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on February 25, 2019.

TRD-201900656
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 17, 2019
Proposal publication date: December 14, 2018
For further information, please call: (512) 305-7700

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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.3, 703.13, 703.21, 703.22

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to §§703.3, 703.13, 703.21, and 703.22 without changes to the proposed amendments as published in the January 4, 2019, issue of the *Texas Register* (44 TexReg 53); therefore, the rules will not be republished. The amendments clarify the processes, annual training, audit deadlines, and reporting periods for Institute grant recipients.

Reasoned Justification

The proposed amendment to §703.3 provides the process for a product development research grant applicant to receive a refund of the application fee if the CPRIT or the grant applicant withdraws the proposal from the review process prior to an evaluation by peer reviewers. The changes to §703.13 clarify the deadline for grantees to submit the required audit report, revising the deadline from 270 days to nine months after the close of the grantee's fiscal year. The proposed amendment to §703.21 sets the initial reporting period for prevention grants approved for an award during the last quarter of the state fiscal year. The proposed change allows prevention grantees to report on a full initial quarter. The proposed amendment to §703.22 changes the deadline for grant recipients to complete annual compliance training from November 1 to December 31. The change correlates the annual requirement to the calendar year.

Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments to §§703.3, 703.13, 703.21, and 703.22.

The rule change is adopted under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

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

Filed with the Office of the Secretary of State on February 22, 2019.

TRD-201900628
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Effective date: March 14, 2019
Proposal publication date: January 4, 2019
For further information, please call: (512) 305-8487

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER A. GENERAL RULES

34 TAC §3.12

The Comptroller of Public Accounts adopts new §3.12, concerning hotel projects, project financing zones, and qualified hotel projects, with changes to the proposed text as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7644). The rules will be republished. This section implements four statutory provisions that concern tax rebates and implements House Bill 1896, House Bill 2445, and Senate Bill 345, 85th Legislature, 2017. This section also establishes the administrative and procedural guidelines for an owner of a qualified hotel project, a municipality, a nonprofit municipally sponsored local government corporation, and a nonprofit corporation acting on behalf of an eligible central municipality, to claim such rebates.

The first provision is Government Code, §2303.5055 (Refund, Rebate, or Payment of Tax Proceeds to Qualified Hotel Project), which requires the comptroller to rebate, refund, or pay to the owner of a qualified hotel project the local ad valorem, local sales and use, local hotel occupancy, and local mixed beverage taxes generated, paid, or collected by the qualified hotel project, or a business at the qualified hotel project, and remitted to the comptroller, when a governmental body has entered into an agreement to rebate, refund, or pay to the owner of a qualified hotel project those local taxes generated from the qualified hotel project.

The second provision is Tax Code, §151.429(h) (Tax Refunds for Enterprise Projects), which requires the comptroller to rebate to the owner of a qualified hotel project the state sales and use and state hotel occupancy taxes paid by the qualified hotel project, or a business located in the qualified hotel project, for a period of ten years.

The third provision is Tax Code, §351.1015(g) (Certain Qualified Projects), which requires the comptroller to pay to a municipality the amount of state sales and use, state hotel occupancy, and state mixed beverage taxes collected in any calendar year from hotels located in a project financing zone that exceeds the amount of those taxes collected the year the municipality designates the zone, excluding the state sales and use and state hotel occupancy taxes collected from a hotel project that exists in the zone on the date the municipality designates the zone.

The fourth provision is Tax Code, §351.102(c) (Pledge for Bonds), which entitles a municipality to receive from a hotel project the funds that the owner of a qualified hotel project receives under Tax Code, §151.429(h), which are state sales and use and state hotel occupancy taxes paid or collected by a hotel or a business at the hotel project. Tax Code, §351.102(c) may also entitle a municipality to receive the funds that the owner of a qualified hotel project receives under Government Code, §2303.5055, which are local ad valorem, local sales and use, local hotel occupancy, and local mixed beverage taxes generated, paid or collected by a hotel or a business at the hotel project that a governmental body has agreed to rebate, refund, or pay.

The following people submitted comments on the proposed new section: the City of Arlington, City Manager Trey Yelverton, the City of Fort Worth, Deputy City Attorney Peter Vaky, the City of Grand Prairie, Deputy City Manager Bill Crolley, and the City of Sugar Land, Intergovernmental Relations Manager Rick Ramirez. The agency also received comments from State Representative Chris Turner, Brown & Hofmeister, LLP attorney Jeffrey L. Moore, and Shupe Ventura PLLC attorney Misty Ventura. The comptroller agrees to make changes to the proposed language based on some of the comments received, including revising some proposed provisions and adding other provisions. The comptroller declines to make additional changes based on other comments at this time.

Mr. Ramirez and Ms. Ventura submitted written comments indicating that there is an omission of certain cities added to Tax Code, §351.102 during the 85th Legislature.

In response to the comments, the comptroller makes corresponding changes throughout the proposed section to implement House Bill 1896, House Bill 2445, and Senate Bill 345, 85th Legislature, 2017.

Subsection (a) applies to hotel projects.

Paragraph (1) provides definitions.

Subparagraph (A) defines the term "convention center entertainment-related facilities." Tax Code, §351.102(b) includes the term "convention center entertainment-related facilities" as a facility ancillary to a hotel, but does not define the term therein. The comptroller bases the definition of the term on Tax Code, §351.001(2) (Definitions), Tax Code, §351.102(b), and the definition of "entertainment" in *Oxford Living Dictionaries* (https://en.oxforddictionaries.com/definition/us/entertainment). Tax Code, §351.001(2) defines "convention center facilities" as "facilities that are primarily used to host convention and meetings." Tax Code, §351.102(b) provides that a convention center facility must be owned by a municipality. Tax Code, §351.102(b) also uses the term "entertainment-related." *Oxford Living Dictionaries* defines "entertainment" as an event, performance, or activity designed to entertain others. Tax Code, §351.102(b) qualifies the term "entertainment-related" by relating it directly to a convention center facility. It follows that "convention center entertainment-related facilities" do not include all facilities designed and used for entertainment, but must be facilities designed and primarily used for conventions and meetings held at the convention center.

Mr. Yelverton, Mr. Crolley, Mr. Ramirez, Representative Turner, and Ms. Ventura submitted written comments regarding the proposed definition of the term "convention center entertainment-related facilities." Generally, the commenters expressed concern that the definition is narrow, unclear, and arbitrary.

Specifically, Mr. Yelverton and Ms. Ventura commented that a case-by-case analysis should be used to determine the facilities that qualify as convention center entertainment-related facilities.

Mr. Crolley and Ms. Ventura both expressed that the court's rationale in *Putnam v. City of Irving,* 331 S.W.3d 869 (Tex. App.-Dallas 2011, pet. denied) was that Tax Code, §351.102 does not require a primary use analysis approach to determine whether a facility is a convention center entertainment-related facility.

Mr. Crolley commented that the exclusion for facilities designed for a specific use along with the accompanying examples should be removed because it is not derived from statute. Mr. Crolley, Ms. Ventura, Mr. Ramirez, and Representative Turner disagreed with the exclusion of entertainment facilities, such as water parks, museums, sports venues, and zoos. Ms. Ventura proposed to define the term by focusing on entertainment-related facilities that assist in attracting conventions and attendees and promoting tourism.

The comptroller declines to change the definition of convention center entertainment-related facility. The primarily use requirement is consistent with the statute because the statute uses it in the definition of convention center in Tax Code, §351.001(2). The *Putnam* court did not directly rule on the meaning of a convention center entertainment-related facility. The commenters proposed a broadening of the definition that will not give effect to statute because it ignores the statute's use of the word convention center to modify entertainment-related facility. Using a case-by-case approach and removing explicit exclusions does not provide definitive guidance as to the facilities that qualify as convention center entertainment-related facilities.

The comptroller adopts the definition of convention center entertainment-related facilities as facilities owned by or located on land owned by the municipality or the nonprofit organization acting on behalf of an eligible central municipality, and designed and primarily used for convention center events, activities, and performances. The definition provides examples of facilities that qualify as convention center entertainment-related facilities as well as examples that do not qualify.

Subparagraph (B) defines the term "convention center facilities." The comptroller bases the definition on Tax Code, §351.001(2). The definition applies to hotel projects, project financing zones, and qualified hotel projects, and includes specific provisions. In response to comments by Mr. Ramirez and Ms. Ventura regarding the changes made by the 85th Legislature to Tax Code, Chapter 351, the comptroller adds the definition of "meetings"

that was enacted in House Bill 1896, 85th Legislature, 2017, to the definition of convention center facilities.

The comptroller defines the term "eligible central municipality" in subparagraph (C) as that term appears in Tax Code, §351.001(7).

Subparagraph (D) defines the term "eligible tax proceeds." The comptroller bases the definition on Government Code, §2303.5055(e).

Subparagraph (E) defines the term "facility ancillary to the hotel." Tax Code, §351.102(b) uses but does not define the term. Tax Code, §351.102(b), provides that the facilities ancillary to the hotel are part of the hotel project. A hotel project must be owned by or located on land owned by the city or, for an eligible central municipality, by a nonprofit corporation acting on its behalf. Therefore, the facilities ancillary to the hotel must also be owned by or located on land owned by the city or a nonprofit corporation acting on behalf of an eligible central municipality. Tax Code, §351.102(b) further provides that facilities ancillary to the hotel must be located within 1,000 feet of either the hotel or the convention center facility. In addition, the definition provides that the facility "provides necessary support for the operation and function of the hotel." The comptroller bases this requirement on the uses of the term "ancillary" in the Tax Code, the definition of "ancillary" in *Oxford Living Dictionaries* (https://en.oxforddictionaries.com/definition/us/ancillary), and the decision in *Putnam v. City of Irving,* 331 S.W.3d 869 (Tex. App.-Dallas 2011, pet. denied). The Tax Code references "ancillary" in various sections, such as, Tax Code, §151.0047(b)(2) (Real Property Repair and Remodeling) {"{g}roup of manufacturing and processing machines and ancillary equipment that together are necessary to create or produce..."}; Tax Code, §151.318(c)(1)(B) (Property Used in Manufacturing) {"...{p}iping through which the product ... is recycled or circulated in a loop between the single item of manufacturing equipment and the ancillary equipment that supports only that single item of manufacturing equipment..."}; and Tax Code, §313.021(2)(C)(iii) {"... '{q}ualified property' means ... tangible personal property... that is first placed in service in the new building ... if the personal property is ancillary and necessary to the business conducted..."}. The *Oxford Living Dictionaries* defines "ancillary" as "providing necessary support to the primary activities or operation of an organization, institution, industry, or system." The decision in *Putnam* states that the facilities do not have to be physically connected to the hotel and the restaurants do not have to derive the majority of their revenue from hotel guests to qualify as "ancillary." *Putnam,* 331 S.W.3d at 876. Finally, the area of a hotel project may encompass existing facilities within 1,000 feet of the hotel or convention center facility. Because existing facilities may be built prior to and independent of the development of a hotel project, the definition excludes existing facilities located within 1,000 feet of the hotel or convention center facility that are not constructed, developed, or remodeled as part of the hotel project.

Mr. Yelverton, Mr. Crolley, Mr. Ramirez, Mr. Moore, Ms. Ventura, and Representative Turner provided written comments regarding the proposed definition of the term "facility ancillary to the hotel." Generally, the commenters stated the definition is not supported by statute, is not clear, and is too narrow.

Mr. Yelverton and Ms. Ventura both commented that the legislature did not intend that ancillary facilities "be necessary" to support the operation and function of the hotel. The legislature only applied the "necessary" requirement to street and water and sewer infrastructure. Both also added that the definition is not supported by the common dictionary definitions of ancillary or the *Putnam* decision. Specifically, Mr. Yelverton commented that the 1,000-foot distance requirement does not correspond to the "necessary support" requirement and that the definition should be modified to a facility that only supports or supplements the hotel. Ms. Ventura provided that ancillary means connected to or supplementary to a hotel and that the legislature intended to include something more than the facilities that are inherently part of a hotel. She asked for the proposed definition to expressly recognize that the examples are not an exhaustive list of ancillary facilities. She also proposed to add to the definition amenities and special attractions that are integral to a convention center hotel resort and attract hotel guests and tourists.

The comptroller declines to change the definition of facility ancillary to the hotel based on these comments. The comments request a broadening of the definition that is not supported by statute or case law. The common meaning of ancillary is to provide necessary support. The comments conflate the measurement requirement for ancillary facilities with the meaning of that term.

In response to comments by Mr. Ramirez and Ms. Ventura regarding the changes made by the 85th Legislature to Tax Code, Chapter 351, the comptroller adds the municipalities included in House Bill 2445 and Senate Bill 345, 85th Legislature, 2017. House Bill 2445 adds thirteen municipalities to the municipalities that are eligible to receive rebates from a hotel project. Senate Bill 345 adds to the municipalities eligible for rebates from a hotel project, a municipality with a population of 173,000 or more that is located within two or more counties with a hotel project not owned by or located on land owned by the municipality if the project is located on land that is owned by the federal government and the project is located within 1,000 feet of a convention center facility owned by the municipality.

The comptroller received written comments from Mr. Crolley, Mr. Ramirez, and Representative Turner regarding measuring the 1,000-foot requirement for ancillary facilities. Mr. Ramirez and Representative Turner both proposed that the 1,000-foot distance requirement be measured from the property line of an ancillary facility to the property line of the convention center facility.

Mr. Crolley commented that the wall-to-wall limitation is unnecessary, contrary to law, and too narrow. Mr. Crolley indicated that the *Putnam* decision can be interpreted to suggest the 1,000-foot distance requirement may be unnecessary when the facilities are located in one complex. Mr. Crolley also stated that surface parking and street, water, and sewer infrastructure do not have exterior walls, making the wall-to-wall calculation practically impossible.

In response to the concerns identified by Mr. Crolley regarding surface parking, the comptroller amends the definition of facility ancillary to a hotel to measure the 1,000-foot distance requirement for surface parking lot facilities. The closest marked parking space of a surface parking lot facility must be within a 1,000 feet of the closest exterior wall of the convention center facility or hotel. If the surface parking lot facility is intersected by a road or thoroughfare, only the portion of the parking lot that contains the marked parking space within 1,000 feet of the convention center facility or hotel will be eligible for rebates.

The comptroller declines to make any additional changes to the definition of facility ancillary to the hotel related to the distance requirement. The statute is silent on how to measure the dis-

tance requirement. The comptroller has the authority to set the measurement to achieve consistency among hotel projects especially when cities can plat property boundaries at varying distances.

The comptroller received written comments from Mr. Crolley, Mr. Ramirez, Representative Turner, Ms. Ventura, and Mr. Moore related to excluding existing facilities from the definition of facility ancillary to the hotel. Mr. Crolley, Mr. Ramirez, and Ms. Ventura commented that development projects occur in phases and that constructing facilities prior to the completion of the hotel project should not disqualify a facility as an ancillary facility.

Representative Turner commented that the agency should include existing facilities developed on the same property as the hotel project within the last few years. Additionally, Mr. Moore stated that Section 351.102(b) does not provide a time requirement for the development of ancillary facilities and that *Putnam* provides a common meaning for the term "ancillary," which does not mean pre-existing. Mr. Moore explained that revenues derived from pre-existing facilities are supportive and supplementary, and therefore, are ancillary to the hotel project.

The comptroller will clarify that ancillary facilities may be completed in phases during the development of a hotel project. However, existing facilities that are not part of the hotel project development will not qualify. The comptroller declines to make any other changes to the definition related to existing facilities.

The comptroller received written comments from Mr. Moore that ancillary facilities do not have to be owned by or located on land owned by a city. Mr. Moore explained that the statute does not insert the words "owned by the municipality" for describing facilities ancillary to the hotel.

The comptroller declines to change the definition related to the ownership of ancillary facilities. A hotel project must be owned by or located on land owned by the municipality. A hotel project includes the hotel and the facilities ancillary to the hotel, therefore, the facilities ancillary to a hotel must meet the same ownership requirements.

Subparagraph (F) defines the term "governmental body." The comptroller bases this definition on the interpretation of Government Code, §2303.505 (Local Sales and Use Tax Refunds), which provides for refunds of local taxes under a written agreement with the governing body of a municipality or county.

Subparagraph (G) defines the term "hotel and convention center project," which is defined in Tax Code, §351.102(c-1). This definition was added in House Bill 2445, 85th Legislature, 2017. The comptroller reletters subsequent subparagraphs.

Subparagraph (H) defines the term "hotel project," which is described in Tax Code, §351.102(b) but not defined therein. The comptroller bases this definition on Tax Code, §351.001(2) and §351.102(b).

The comptroller received comments from Mr. Vaky that the 1,000-foot distance should be measured from the closest exterior wall of the convention center facility, or the property line of a surface parking lot serving a convention center facility.

The comptroller amends the rule to specifically state that parking lots that service a convention center facility are not part of a convention center facility for the purpose of measuring the 1,000-foot distance requirement.

One commenter identified a typographical mistake in a cross-reference found in subsection (a)(1)(H). The comptroller corrects the cross-reference in subsection (a)(1)(H).

Subparagraph (I) defines the term "open for initial occupancy." The term used in Tax Code, §151.429(h), but not defined, explains when the 10-year rebate period of state sales and state hotel occupancy taxes begins. The comptroller bases the meaning of the term on the definition of a hotel in Tax Code, §156.001 (Definitions) and Tax Code, §351.001(4), the definition of a convention center facility in Tax Code, §351.001(2), and the requirements of a hotel project in Tax Code, §351.102(b). A reasonable interpretation of the phrase is to reference the earliest date on which a member of the public obtains sleeping accommodations for consideration and the convention center is operational, as supported by records of the hotel and convention center.

Subparagraph (J) defines the term "shop." Tax Code, §351.102(b) includes the term "shops" as a facility ancillary to a hotel, but does not define the term therein. The comptroller bases the meaning of the term on the definition of shop in Merriam-Webster's Dictionary (https://www.merriam-webster.com/dictionary/shop), which defines "shop" as "a building or room stocked with merchandise for sale: store." The comptroller defines a shop as a retail store that exclusively sells tangible personal property.

The comptroller received written comments from Ms. Ventura that the definition of shop is too narrow. She proposed to modify the definition to "a retail store that primarily sells tangible personal property."

The comptroller declines to make this change. Changing the definition of shop to a store that "primarily" sells tangible personal property, will open the definition to broader interpretations and could cause confusion with whether a store meets the definition of shop.

The comptroller defines the term "tangible personal property" in subparagraph (K), as that term appears in Tax Code, §151.009 (Tangible Personal Property).

Paragraph (2) establishes the requirements to initiate a request for a rebate, refund, or payment of taxes for a hotel project. Subparagraph (A) addresses the requirements that must be satisfied by a municipality described in Tax Code, §351.102(b).

The comptroller received written comments from Ms. Ventura that the documentation requirements should allow cities to provide a copy of the city ordinance or resolution approving the rebate agreement between the city or nonprofit acting on behalf of an eligible central municipality, and the hotel project.

The comptroller amends subsection (a)(2)(A)(iii) to allow a city to either submit a copy of an ordinance or resolution approving the rebate agreement.

Included is the requirement to submit to the comptroller's Audit Division a waiver of confidentiality release for each business at a hotel project that permits the comptroller to disclose otherwise confidential sales tax and mixed beverage sales tax information to the municipality or the nonprofit corporation acting on behalf of an eligible central municipality. Pursuant to Tax Code, §151.027 (Confidentiality of Tax Information) and §321.3022(d) (Tax Information), the comptroller can only rebate taxes generated by a business at a hotel project to the municipality or the nonprofit corporation acting on behalf of an eligible central municipality when the business has waived its right of confidentiality. The waiver of confidentiality release must be renewed annually, unless the

waiver specifically states that it is in effect for three years, which the comptroller allows for ease of administration. The comptroller will not approve a period longer than three years to ensure that, in the future, all parties are aware of the waiver of confidentiality release.

Subparagraph (B) provides that the comptroller will give the requestor written notice of the results of the request to initiate a rebate, refund, or payment of taxes for a hotel project.

Paragraph (3) describes and establishes procedures to qualify for the tax rebates that hotel projects may receive. Subparagraph (A) provides that a municipality to which Tax Code, §351.102(b) applies is entitled under Tax Code, §351.102(c) to receive the funds an owner of a qualified hotel project may receive under Government Code, §2303.5055(a) or Tax Code, §151.429(h). Therefore, the tax rebate period for a hotel project is the same as it is for a qualified hotel project. The comptroller proposes the period for state and local tax rebates be the first 10 years after the hotel project is open for initial occupancy. This is based on the comptroller's interpretation of Government Code, §2303.5055(a) and Tax Code, §151.429(h) and §351.102(c). Under Government Code, §2303.5055(a), upon agreement with a governmental body, the owner of a qualified hotel project may receive a rebate of eligible tax proceeds "for a period that may not exceed 10 years." Under Tax Code, §151.429(h), the owner of a qualified hotel project is entitled to receive a refund, rebate, or payment of 100% of the state sales and use tax and state hotel occupancy tax paid or collected by a hotel or a business located in the qualified hotel project, "during the first 10 years after such qualified hotel project is open for initial occupancy." Although the language to describe the 10-year period in which state taxes and local taxes are rebated differs, to maintain consistency among provisions of Government Code, §2303.5055(a) and Tax Code, §151.429(h) and §351.102(c), the comptroller proposes the tax rebate period to mean "during the first 10 years after such hotel project is open for initial occupancy." The tax rebate period ends on the tenth anniversary of the date the hotel project opened for initial occupancy.

Subparagraph (B) explains that rebates under Government Code, §2303.5055 apply to a hotel project when there is an agreement with a governmental body as required in Government Code, §2303.5055(a).

Subparagraph (C) provides that municipalities described in paragraph (1)(E)(ii)(VI-XVII) of subsection (a) are not entitled to receive funds from a hotel project unless the municipality has pledged the revenue derived from the hotel occupancy tax paid or collected from the hotel project for the payment of bonds or other obligations issued or incurred for the hotel project. House Bill 2445, 85th Legislature, 2017, enacted this requirement.

Subparagraph (D) contains the requirement that a municipality enter into an agreement with a person for the development of the hotel project before September 1, 2019, to receive or pledge revenue or funds for a hotel project or a hotel and convention center project. House Bill 2445, 85th Legislature, 2017, enacted this requirement.

Subparagraph (E) provides that a municipality to which Tax Code, §351.102(c-1) applies is entitled under Tax Code, §351.102(c) to receive the funds an owner of a qualified hotel project may receive under Government Code, §2303.5055(a) or Tax Code, §151.429(h). As with a hotel project, the tax rebate period for a hotel and convention center project is the same as it is for a qualified hotel project. House Bill 2445, 85th Legislature, 2017, included hotel and convention center projects into the projects that qualify for rebates of taxes.

Paragraph (4) addresses the situation in which a municipality designates multiple hotel projects. Subparagraph (A) explains that a municipality may designate more than one hotel project. Subparagraph (B) provides that, after a facility ancillary to a hotel has entered into an agreement with a hotel project, the facility cannot associate with another hotel project to extend the 10-year tax rebate period. This is based on the comptroller's interpretation of Government Code, §2303.5055(a) and Tax Code, §151.429(h).

Subsection (b) applies to project financing zones.

Paragraph (1) provides definitions.

Subparagraph (A) defines the term "base year amount." The comptroller bases the definition on Tax Code, §351.1015(a)(1).

Subparagraph (B) defines the term "commenced," which is used in Tax Code, §351.1015(g), but not defined therein. The comptroller bases the definition of "commence" as it appears in the Merriam-Webster Dictionary (https://www.merriam-webster.com/dictionary/commence), which defines the term as "to have or make a beginning; start." The comptroller adopts that a qualified project begins with the execution of a contract to acquire, lease, construct, improve, or equip the qualified project.

Subparagraph (C) defines the term "convention center facility." The comptroller bases the definition on Tax Code, §351.001(2). The definition applies to hotel projects, project financing zones, and qualified hotel projects, and includes specific provisions.

Subparagraph (D) defines the term "date of designation," which is not defined by statute but is necessary to implement certain statutory provisions. Tax Code, §351.1015(f) requires the municipality to notify the comptroller of the municipality's designation of a project financing zone not later than the 30th day after the date the municipality designates the zone. Tax Code, §351.1015(f) further provides the municipality is entitled to receive the incremental hotel-associated revenue from the project financing zone beginning the first day of the year after the year the municipality designates the zone and ending the last day of the month during which the designation expires. Pursuant to Tax Code, §351.1015(a)(4), that expiration date is not later than the 30th anniversary of the date of the designation. The comptroller adopts the date of designation of a project financing zone as the date the municipality by ordinance or agreement designates a project financing zone.

Subparagraph (E) defines the term "hotel-associated revenue." The comptroller bases the definition on Tax Code, §351.1015(a)(2).

Subparagraph (F) defines the term "incremental hotel-associated revenue." The comptroller bases the definition on Tax Code, §351.1015(a)(3). The comptroller changes references of suspense account to trust account to describe the agency's administrative practice related to the deposit of these revenues. Pursuant to Tax Code, §351.1015(g), the comptroller deposits incremental hotel-associated revenue into a trust account for the municipality. The amount of incremental hotel-associated revenue the comptroller deposits is the amount of hotel-associated revenue collected from hotels located in the project financing zone in any calendar year, minus the base year amount that was collected from hotels located in the project financing zone in the year of the zone's date of designation. Tax Code, §351.1015(a)(2)(A) excludes from hotel-associated

revenue the revenue received under Tax Code, §351.102(c) for a hotel project that is located in the zone and that exists when the municipality designates the zone. To be consistent with provisions of Tax Code, §351.1015(a)(1), (2), and (3), the comptroller adopts that, after the 10-year state tax rebate period ends for a hotel project that was located in the zone and that existed when the zone was designated, the hotel-associated revenue received from the hotel located in the hotel project will be included in the calculation of incremental hotel-associated revenue, but not included in the base year amount.

The comptroller defines the term "project financing zone" in subparagraph (G) as it appears in Tax Code, §351.1015(a)(4).

The comptroller defines the term "qualified project" in subparagraph (H) as that term appears in Tax Code, §351.1015(a)(5).

The comptroller defines "related infrastructure" and "venue" in subparagraph (I) and subparagraph (J), as those terms appear in Local Government Code, §334.001(3) and (4) (Sports and Community Venues).

Paragraph (2) establishes the requirements to initiate a request for a rebate, refund, or payment of taxes for qualified projects located in project financing zones. Subparagraph (A) addresses requirements a municipality must satisfy in order to initiate a request for tax rebates for qualified projects located in project financing zones. Included in the information the municipality must submit to the comptroller's Audit Division is a waiver of confidentiality release for each business at a hotel when there are fewer than four businesses reporting sales tax or mixed beverage sales tax within a project financing zone, required by Tax Code, §151.027 and Tax Code, §321.3022(d). The waiver of confidentiality release must be renewed annually, unless the waiver specifically states that it is in effect for three years, which the comptroller allows for ease of administration. The comptroller will not approve a period longer than three years to ensure that, in the future, all parties are aware of the waiver of confidentiality release.

Subparagraph (B) addresses when a municipality designates one project financing zone that includes multiple qualified projects, and how the comptroller considers the boundaries of the zone. The hotel-associated revenue collected or received from all hotels located in the project financing zone will be included in the zone's incremental hotel-associated revenue, and payments to the municipality will begin when the municipality notifies the comptroller the first qualified project has commenced.

Subparagraph (C) provides that the comptroller will give the requestor written notice of the results of the request to initiate a rebate, refund, or payment of taxes for a qualified project in a project financing zone.

Paragraph (3) describes and establishes procedures to qualify for the tax rebates that qualified projects in a project financing zone may receive. Subparagraph (A) identifies which municipalities may designate a project financing zone and pledge incremental hotel-associated revenue received from hotels located in the project financing zone for the payment of bonds and other obligations to acquire, lease, construct, improve, enlarge, and equip a qualified project.

Subparagraph (B) explains that the municipality must notify the comptroller not later than 30 days after designating a project financing zone. The subparagraph further establishes that the boundaries of a project financing zone must be within a three-mile radius of the center of a qualified project and within the corporate limits of the municipality. The project financing zone's designation must include the longitude and latitude of the center of the qualified project.

Subparagraph (C) explains that the municipality is entitled to receive incremental hotel-associated revenue from hotels located within the project financing zone beginning the first day of the year after the year the municipality designated the project financing zone. Payments of incremental hotel-associated revenue end on the last day of the month in which the designation expires, which cannot be later than 30 years from the anniversary month the municipality designated the project financing zone.

Subparagraph (D) explains that the comptroller will deposit incremental hotel-associated revenue into a separate trust account beginning the first day of the year after the year the municipality designated the project financing zone, and begins to make payments of the revenue on the date the qualified project has commenced. The comptroller deletes the phrase "outside of the state treasury" to appropriately describe the agency's administrative practice related to the deposit of these revenues. If the qualified project has not commenced by the fifth anniversary, the comptroller must stop making deposits and transfer the money in the account to the state's general revenue fund. Tax Code, §351.1015(h) authorizes the comptroller to estimate the amount of incremental hotel-associated revenue that will be deposited to a trust account. A municipality can request disbursements from the account on a monthly basis based on the estimate. "Estimated incremental hotel-associated revenue" is the difference between the revenue from the previous year and the base year amount, except the first year's estimated incremental hotel-associated revenue is the base year amount, less the previous year revenue amount. Each year's estimation will be adjusted at the end of the calendar year pursuant to Tax Code, §351.1015(h). If the qualified project is abandoned, the municipality must notify the comptroller, and the comptroller must transfer to the general revenue fund the amount in the trust account that exceeds the amount needed for payment of bonds or other obligations of the municipality.

Subsection (c) applies to qualified hotel projects.

Paragraph (1) provides definitions.

Subparagraph (A) defines the term "convention center facilities." The comptroller bases the definition on Tax Code, §351.001(2). The definition applies to hotel projects, project financing zones, and qualified hotel projects, and includes specific provisions.

Subparagraph (B) defines the term "eligible tax proceeds." The comptroller bases the definition on Government Code, §2303.5055(e).

Subparagraph (C) defines the term "facility ancillary to the hotel." Government Code, §2303.003(8) (Definitions) uses but does not define the term. The comptroller bases the definition on the interpretation of the term in Government Code, §2303.003(8), which provides that a qualified hotel project means a hotel "that is within 1,000 feet of a convention center owned by a municipality with a population of 1,500,000 or more, including shops, parking facilities, and any other facilities ancillary to the hotel." The definition provides that the facility "provides necessary support for the operation and function of the hotel." The comptroller bases this requirement on the uses of the term "ancillary" in the Tax Code, and the definition of "ancillary" in *Oxford Living Dictionaries* (https://en.oxforddictionaries.com/definition/us/ancillary). The Tax Code references "ancillary" in various sections, includ-

ing Tax Code, §151.0047(b)(2) {"{g}roup of manufacturing and processing machines and ancillary equipment that together are necessary to create or produce..."}, Tax Code, §151.318(c)(1)(B) {"...{p}iping through which the product ... is recycled or circulated in a loop between the single item of manufacturing equipment and the ancillary equipment that supports only that single item of manufacturing equipment..."}, and Tax Code, §313.021(2)(C)(iii) {"... '{q}ualified property' means ... tangible personal property... that is first placed in service in the new building ... if the personal property is ancillary and necessary to the business conducted..."}. The *Oxford Living Dictionaries* defines "ancillary" as "providing necessary support to the primary activities or operation of an organization, institution, industry, or system." Finally, the area of a qualified hotel project may encompass existing facilities within 1,000 feet of the convention center facility. Because existing facilities may be built prior to and independent of the development of a qualified hotel project, the definition excludes existing facilities located within 1,000 feet of the convention center facility that are not constructed, developed, or remodeled as part of the qualified hotel project.

As with hotel projects, the comptroller received similar comments regarding the definition of facility ancillary to the hotel for a qualified hotel project. The comments related to excluding existing facilities from the definition of facility ancillary to a hotel, measuring the 1,000-foot distance requirement, and the ownership requirements of ancillary facilities.

The comptroller amends the definition to address the 1,000-foot distance requirement for surface parking lot facilities to be consistent with the measurement for hotel projects. The comptroller also clarifies that ancillary facilities may be completed in different phases during the development of a qualified hotel project. However, existing facilities, such as restaurants, that are not part of the qualified hotel project development will not qualify. The comptroller declines to make any other changes to the definition related to existing facilities and the ownership requirement.

Subparagraph (D) defines the term "governmental body." The comptroller bases this definition on the interpretation of Government Code, §2303.505 (Local Sales and Use Tax Refunds), which provides for refunds of local taxes under a written agreement with the governing body of a municipality or county.

Subparagraph (E) defines the term "nonprofit municipally sponsored local government corporation." The comptroller bases this definition on how the term is used in Tax Code, §351.001(2) to define the term "convention center facilities". To maintain consistency with the provisions of the Municipal Hotel Occupancy Tax law (Tax Code, Chapter 351) and the Enterprise Zone Act (Government Code, Chapter 2303), this definition also applies to the term "municipally sponsored local government corporation" used in Government Code, §2303.5055(b).

Subparagraph (F) defines the term "open for initial occupancy." The term is used in Tax Code, §151.429(h) to explain when the 10-year rebate period of state sales and state hotel occupancy taxes begins, but is not defined. The comptroller bases the meaning of the term on the definition of a hotel in Tax Code, §156.001 and Tax Code, §351.001(4), the definition of a convention center facility in Tax Code, §351.001(2), and the requirements for a qualified hotel project in Government Code, §2303.003(8) and §2303.5055(a). The comptroller provides that a reasonable interpretation of the phrase is to reference the earliest date on which a member of the public obtains sleeping accommodations for consideration and the convention center is operational, as supported by records of the hotel and convention center.

Subparagraph (G) defines the term "qualified hotel project." The comptroller bases the definition on Government Code, §2303.003(8). The definition of a qualified hotel project is limited to a municipality having a population of 1,500,000 or more, which currently is only Houston. Additionally, the comptroller accepts the analysis of Attorney General Opinion No. 95-085, which concluded that the definition of a "qualified hotel project" includes a privately owned hotel selected by the municipality.

As with hotel projects, the comptroller received comments from Mr. Vaky that the 1,000-foot distance should be measured from the closest exterior wall of the convention center facility, or the property line of a surface parking lot serving a convention center facility.

The comptroller amends the rule to specifically state that parking lots that service a convention center facility are not part of a convention center facility for the purpose of measuring the 1,000-foot distance requirement.

Paragraph (2) establishes the requirements to initiate a request for a rebate, refund, or payment of taxes for a qualified hotel project. Subparagraph (A) addresses the requirements that must be satisfied by an owner of a qualified hotel project. Included is the requirement to submit to the comptroller's Audit Division a waiver of confidentiality release for each business at a qualified hotel project that permits the comptroller to disclose otherwise confidential sales tax and mixed beverage sales tax information to the owner of the qualified hotel project. Pursuant to Tax Code, §151.027 and §321.3022(d), the comptroller can only rebate taxes generated by a business at a qualified hotel project to the owner of a qualified hotel project when the business has waived its right of confidentiality. The waiver of confidentiality release must be renewed annually, unless the waiver specifically states that it is in effect for three years, which the comptroller allows for ease of administration. The comptroller will not approve a period longer than three years to ensure that, in the future, all parties are aware of the waiver of confidentiality release.

Subparagraph (B) provides that the comptroller will give the requestor written notice of the results of the request to initiate a rebate, refund, or payment of taxes for a qualified hotel project.

Paragraph (3) describes and establishes procedures to qualify for the tax rebates that qualified hotel projects may receive. The comptroller adopts the period for tax rebates to be the first 10 years after the qualified hotel project is open for initial occupancy. This is based on the comptroller's interpretation of Government Code, §2303.5055(a) and Tax Code, §151.429(h). Under Government Code, §2303.5055(a), upon agreement with a governmental body, the owner of a qualified hotel project may receive a rebate of eligible tax proceeds "for a period that may not exceed 10 years." Under Tax Code, §151.429(h), the owner of a qualified hotel project is entitled to receive a refund, rebate, or payment of 100% of the state sales and use tax and state hotel occupancy tax paid or collected by a hotel or a business located in the qualified hotel project, "during the first 10 years after such qualified hotel project is open for initial occupancy." Although the language to describe the 10-year period in which state taxes and local taxes are rebated differs, to maintain consistency among provisions of Government Code, §2303.5055(a) and Tax Code, §151.429(h), the comptroller proposes the tax rebate period to

mean "during the first 10 years after such qualified hotel project is open for initial occupancy."

Subparagraph (A) explains the qualifications for rebates of state tax revenue under Tax Code, §151.429(h) and local tax revenue under Government Code, §2303.5055(a), and that the rebate period is for the first 10 years after the qualified hotel project is open for initial occupancy.

Subparagraph (B) explains that rebates under Government Code, §2303.5055 apply to a qualified hotel project when there is an agreement with a governmental body as required in Government Code, §2303.5055(a).

Subparagraph (C) addresses the situation in which a municipality designates multiple qualified hotel projects. The subsection explains that a municipality may designate more than one qualified hotel project. Based on the comptroller's interpretation of Government Code, §2303.5055(a) and Tax Code, §151.429(h), after a facility ancillary to a hotel has entered into an agreement with a qualified hotel project, the ancillary facility cannot associate with another qualified hotel project to extend the 10-year tax rebate period.

Mr. Yelverton objects to the adoption of any rules that serve to reinterpret any guidance from private letter rulings in which detrimental reliance was provided. This comment does not propose a change to the rule. The comptroller declines to make any changes to the rule based on this comment.

The new section is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, as well as taxes, fees, and other charges that the comptroller administers under other law.

The new section implements Government Code, §2303.003(8) (Definitions) and §2303.5055 (Refund, Rebate, or Payment of Tax Proceeds to Qualified Hotel Project), and Tax Code, §§151.429 (Tax Refunds for Enterprise Projects), 156.051 (Tax Imposed), 183.021 (Mixed Beverage Tax Clearance Fund), 351.001 (Definitions), 351.1015 (Certain Qualified Projects), and 351.102 (Pledge for Bonds).

§3.12. Hotel Projects, Project Financing Zones, and Qualified Hotel Projects.

(a) Hotel Projects.

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

(A) Convention center entertainment-related facilities--Facilities owned by or located on land owned by the municipality or the nonprofit corporation acting on behalf of an eligible central municipality, and designed and primarily used for convention center events, activities, and performances. Examples of this term are a performance hall, permanent or temporary stage, amphitheater, and pavilion. The term does not include facilities designed for a specific use. Examples of facilities that do not meet this definition include an amusement park, fitness or sports center, museum, sports venue, waterpark, or zoo.

(B) Convention center facilities--Facilities primarily used to host conventions and meetings. The term means civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or that are managed in whole or part by the municipality.

(i) The term includes parking areas or facilities that are for the parking or storage of conveyances and that are located at or in the vicinity of other convention center facilities.

(ii) The term also means:

(I) a hotel owned by or located on land that is owned by an eligible central municipality or by a nonprofit corporation acting on behalf of an eligible central municipality and that is located within 1,000 feet of a convention center facility owned by the municipality; or

(II) a hotel that is owned in part by an eligible central municipality described by subparagraph (C)(iv) of this paragraph and that is located within 1,000 feet of a convention center facility.

(iii) For the purpose of this subparagraph, "meetings" means gatherings of people that enhance and promote tourism and the convention and hotel industry.

(C) Eligible central municipality--

(i) A municipality with a population of more than 140,000 but less than 1.5 million that is located in a county with a population of one million or more and that has adopted a capital improvement plan for the construction or expansion of a convention center facility;

(ii) a municipality with a population of 250,000 or more that:

(I) is located wholly or partly on a barrier island that borders the Gulf of Mexico;

(II) is located in a county with a population of 300,000 or more; and

(III) has adopted a capital improvement plan to expand an existing convention center facility;

(iii) a municipality with a population of 116,000 or more that:

(I) is located in two counties both of which have a population of 660,000 or more; and

(II) has adopted a capital improvement plan for the construction or expansion of a convention center facility;

(iv) a municipality with a population of less than 50,000 that contains a general academic teaching institution that is not a component institution of a university system, as those terms are defined by Education Code, §61.003 (Definitions); or

(v) a municipality with a population of 640,000 or more that:

(I) is located on an international border; and

(II) has adopted a capital improvement plan for the construction or expansion of a convention center facility.

(D) Eligible tax proceeds--Local ad valorem taxes, local sales and use taxes, local hotel occupancy taxes, local mixed beverage gross receipts taxes, and local mixed beverage sales taxes that are generated, paid, or collected by a qualified hotel project or facilities ancillary to the hotel, and that may be rebated, refunded, or paid to the owner of a qualified hotel project under an agreement with a municipality, county, or other governmental body.

(E) Facility ancillary to the hotel--A facility owned by or located on land owned by a municipality or, for an eligible central municipality, a nonprofit corporation acting on its behalf that provides

necessary support for the operation and function of the hotel, and that is:

(i) located within 1,000 feet of a convention center facility owned by the municipality or hotel, as measured from the closest exterior wall of the ancillary facility in a single-tenant building or closest demising wall of the ancillary facility in a multi-tenant building to the closest exterior wall of the convention center facility or hotel; and

(ii) located in a hotel project owned by or located on land owned by:

(I) an eligible central municipality or a nonprofit organization acting on behalf of an eligible central municipality;

(II) a municipality with a population of 173,000 or more that is located within two or more counties, including a hotel project not owned by or located on land owned by the municipality if the project is located on land that is owned by the federal government;

(III) a municipality with a population of 96,000 or more that is located in a county that borders Lake Palestine;

(IV) a municipality with a population of 96,000 or more that contains the headwaters of the San Gabriel River;

(V) a municipality with a population of at least 99,900 but not more than 111,000 that is located in a county with a population of at least 135,000;

(VI) a municipality with a population of at least 110,000 but not more than 135,000 at least part of which is located in a county with a population of not more than 135,000;

(VII) a municipality with a population of at least 9,000 but not more than 10,000 that is located in two counties, each of which has a population of at least 662,000 and a southern border with a county with a population of 2.3 million or more;

(VIII) a municipality with a population of at least 200,000 but not more than 300,000 that contains a component institution of the Texas Tech University System;

(IX) a municipality with a population of at least 95,000 that borders Lake Lewisville;

(X) a municipality that:

(-a-) contains a portion of Cedar Hill State Park;

(-b-) has a population of more than 45,000;

(-c-) is located in two counties, one of which has a population of more than two million and one of which has a population of more than 149,000; and

(-d-) has adopted a capital improvement plan for the construction or expansion of a convention center facility;

(XI) a municipality with a population of less than 6,000 that:

(-a-) is located in two counties each with a population of 600,000 or more that are both adjacent to a county with a population of two million or more;

(-b-) has full-time police and fire departments; and

(-c-) has adopted a capital improvement plan for the construction or expansion of a convention center facility;

(XII) a municipality with a population of at least 56,000 that:

(-a-) borders Lake Ray Hubbard; and

(-b-) is located in two counties, one of which has a population of less than 80,000;

(XIII) a municipality with a population of more than 83,000, that borders Clear Lake, and that is primarily located in a county with a population of less than 300,000;

(XIV) a municipality with a population of less than 2,000 that:

(-a-) is located adjacent to a bay connected to the Gulf of Mexico;

(-b-) is located in a county with a population of 290,000 or more that is adjacent to a county with a population of four million or more; and

(-c-) has a boardwalk on the bay;

(XV) a municipality with a population of 75,000 or more that:

(-a-) is located wholly in one county with a population of 575,000 or more that is adjacent to a county with a population of four million or more; and

(-b-) has adopted a capital improvement plan for the construction or expansion of a convention center facility;

(XVI) a municipality with a population of less than 75,000 that is located in three counties, at least one of which has a population of at least four million; or

(XVII) a home-rule municipality that borders the Gulf of Mexico with a population of more than 3,000 but less than 5,000.

(iii) The term includes convention center entertainment-related facilities, meeting spaces, restaurants, shops, street and water and sewer infrastructure necessary for the operation of the hotel or ancillary facilities, and parking facilities.

(I) Surface parking lot facilities must be located within 1,000 feet of the convention center facility or hotel, as measured from the closest marked parking space of a surface parking lot facility to the closest exterior wall of the convention center facility or hotel. Surface parking lot facilities intersected by a public road or thoroughfare are considered separate parking facilities. Only a parking lot facility that contains a marked parking space within 1,000 feet of the convention center facility or hotel will be eligible for rebates.

(II) The term includes facilities ancillary to a hotel that are part of the hotel project but that may be completed in different phases of the hotel project as evidenced by documentation listed in paragraph (2) of this subsection. The term does not include existing facilities located within 1,000 feet of the hotel or convention center facility that were not constructed, developed, or remodeled as part of the hotel project.

(F) Governmental body--A local governmental body with the authority to impose taxes.

(G) Hotel and Convention Center Project--A project that is an existing hotel owned by the municipality or another person and a convention center facility to be acquired, constructed, equipped, or leased, that will be located within 1,000 feet of the hotel, and that will be owned by or located on land owned by the municipality. This subparagraph applies only to a municipality that:

(i) is the county seat of a county that:

(I) borders the United Mexican States;

(II) has a population of less than 300,000; and

(III) contains one or more municipalities with a population of 200,000 or more; and

(ii) holds an annual jalapeño festival.

(H) Hotel Project--A hotel that is owned by or located on land owned by a municipality or, for an eligible central municipality, a nonprofit corporation acting on its behalf, and located within 1,000 feet of a convention center facility owned by the municipality, as measured by the closest exterior wall of the hotel and the closest exterior wall of the convention center facility. The parking lot is not part of a convention center facility for the purpose of measuring the 1,000-foot distance requirement. The term includes a facility ancillary to the hotel as defined in subparagraph (E) of this paragraph.

(I) Open for initial occupancy--The earliest date on which a member of the public obtains sleeping accommodations for consideration and the convention center is operational, as supported by records of the hotel and convention center.

(J) Shop--A retail store that exclusively sells tangible personal property.

(K) Tangible personal property--Personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner, and includes a computer program and a telephone prepaid calling card.

(2) Requirements to initiate a request for rebate, refund, or payment of taxes for a hotel project.

(A) A municipality identified in paragraph (1)(E)(ii) and (G) of this subsection seeking a refund from the comptroller of state sales and use taxes, state hotel occupancy taxes, and eligible tax proceeds must submit a written request to the comptroller's Audit Division along with the following information, as applicable:

(i) a copy of the certificate of formation for the nonprofit corporation acting on behalf of an eligible central municipality;

(ii) a copy of the municipality's capital improvement plan;

(iii) a copy of the municipality's ordinance or resolution approving the rebate agreement between the municipality or nonprofit corporation acting on behalf of an eligible central municipality, and the hotel project;

(iv) a copy of the architect's plan for the hotel project;

(v) a map that shows the required distances between the hotel project, including facilities ancillary to the hotel, and the convention center facility;

(vi) records from the hotel, convention center, and municipality, such as guest folios and press releases, which show the date when the project was open for initial occupancy;

(vii) the name and address of the hotel and the comptroller-issued taxpayer identification and location numbers that the hotel is using, or will use, to report sales and use tax, hotel occupancy tax, mixed beverage gross receipts tax, and mixed beverage sales tax;

(viii) the name and comptroller-issued taxpayer identification and location numbers of each facility ancillary to the hotel;

(ix) waiver of confidentiality releases signed by the authorized officer or director of the hotel and each facility ancillary to the hotel allowing the comptroller to release the facility's sales and use tax and mixed beverage sales tax information to the municipality or the nonprofit corporation acting on behalf of an eligible central municipality. A waiver of confidentiality release must be renewed annually, unless it specifically states a longer period not to exceed three years;

(x) the name and telephone numbers of the contact person for the municipality or the nonprofit corporation acting on behalf of an eligible central municipality; and

(xi) a completed direct deposit authorization form from the municipality or the nonprofit corporation acting on behalf of an eligible central municipality.

(B) The comptroller will give the requestor written notice of the results of the request for rebate, refund, or payment of taxes for a hotel project.

(3) Tax rebates for hotel projects.

(A) A municipality described in paragraph (1)(E)(ii) of this subsection is entitled to receive from a hotel project 100% of the state sales and use tax and state hotel occupancy tax paid or collected by the hotel project, and eligible tax proceeds, during the first 10 years after the hotel project is open for initial occupancy. The tax rebate period ends on the tenth anniversary of the date the hotel project opened for initial occupancy.

(B) Pursuant to Government Code, §2303.5055 (Refund, Rebate, or Payment of Tax Proceeds to Qualified Hotel Project), the comptroller can only rebate eligible tax proceeds that a governmental body has agreed to rebate. The agreement must be in writing and specify that the comptroller rebate the eligible tax proceeds directly to the municipality.

(C) A municipality described in paragraph (1)(E)(ii)(VI-XVII) of this subsection is not entitled to receive funds from a hotel project unless the municipality has pledged the revenue derived from the hotel occupancy paid or collected from the hotel project for the payment of bonds or other obligations issued or incurred for the hotel project.

(D) A municipality may not receive or pledge revenue or funds for a hotel project or hotel and convention center project unless the municipality enters into an agreement with a person for the development of the hotel project before September 1, 2019.

(E) A municipality described in paragraph (1)(G) of this subsection is entitled to receive from a hotel and convention center project 100% of the state sales and use tax and state hotel occupancy tax paid or collected by the hotel project, and eligible tax proceeds, during the first 10 years after the hotel project is open for initial occupancy. The tax rebate period ends on the tenth anniversary of the date the hotel project opened for initial occupancy.

(4) Multiple hotel projects.

(A) A municipality described in paragraph (1)(E)(ii) of this subsection may designate more than one hotel project.

(B) After a facility ancillary to the hotel has entered into a tax rebate agreement with a hotel project, the facility cannot associate with another hotel project to extend the 10-year tax rebate period in paragraph (3)(A) of this subsection.

(b) Project financing zones.

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

(A) Base year amount--The amount of hotel-associated revenue collected in a project financing zone during the calendar year that includes the zone's date of designation.

(B) Commenced--The date a contract to acquire, lease, construct, improve, enlarge, or equip a qualified project is executed.

(C) Convention center facilities--Facilities that are primarily used to host conventions and meetings. The term means civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or that are managed in whole or part by the municipality. The term includes:

(i) parking areas or facilities that are for the parking or storage of conveyances and that are located at or in the vicinity of other convention center facilities; and

(ii) a hotel owned by or located on land owned by an eligible central municipality or a nonprofit organization acting on behalf of an eligible central municipality and that is located within 1,000 feet of a convention center facility owned by the municipality.

(D) Date of designation--The date a municipality by ordinance or agreement under Local Government Code, Chapter 380 (Miscellaneous Provisions Relating to Municipal Planning and Development) designates a project financing zone.

(E) Hotel-associated revenue--The amount of tax revenue that is the sum of the following:

(i) state sales and use taxes and state hotel occupancy taxes collected from all hotels located in a project financing zone, excluding the state tax revenue received from a qualified hotel project that exists on the zone's date of designation; and

(ii) the mixed beverage gross receipts tax and mixed beverage sales tax revenue collected from all mixed beverage permittees at hotels located in the project financing zone, excluding the local mixed beverage taxes disbursed to the municipality under Tax Code, §183.051 (Mixed Beverage Tax Clearance Fund).

(F) Incremental hotel-associated revenue--The amount of hotel-associated revenue received in any calendar year from hotels located within a project financing zone, including hotel-associated revenue from hotels built in the project financing zone after the year in which a municipality designates the zone, that exceeds the base year amount. After the hotel project's 10-year state tax rebate period expires, the hotel-associated revenue received from a hotel located in a hotel project that existed on the zone's date of designation is included in incremental hotel-associated revenue, but not included in the base year amount.

(G) Project financing zone--An area within a municipality:

(i) that the municipality by ordinance or by agreement under Local Government Code, Chapter 380, designates as a project financing zone;

(ii) the boundaries of which are within a three-mile radius of the center of a qualified project;

(iii) the designation of which specifies the longitude and latitude of the center of the qualified project; and

(iv) the designation of which expires not later than the 30th anniversary of the date of designation.

(H) Qualified project--

(i) A convention center facility; or

(ii) a multipurpose arena or venue that includes a livestock facility and is located within or adjacent to a recognized cultural district, and any related infrastructure, that is:

(I) located on land owned by a municipality or by the owner of the venue;

(II) partially financed by private contributions that equal not less than 40% of the project costs; and

(III) related to the promotion of tourism and the convention and hotel industry.

(I) Related infrastructure--The term includes any store, restaurant, on-site hotel, concession, automobile parking facility, area transportation facility, road, street, water or sewer facility, park, or other on-site or off-site improvement that relates to and enhances the use, value, or appeal of a venue, including areas adjacent to the venue, and any other expenditure reasonably necessary to construct, improve, renovate, or expand a venue, including an expenditure for environmental remediation.

(J) Venue--

(i) an arena, coliseum, stadium, or other type of area or facility:

(I) that is used or is planned for use for one or more professional or amateur sports events, community events, or other sports events, including rodeos, livestock shows, agricultural expositions, promotional events, and other civic or charitable events; and

(II) for which a fee for admission to the events is charged or is planned to be charged;

(ii) a convention center, convention center facility, or related improvement, such as a civic center hotel, theater, opera house, music hall, rehearsal hall, park, zoological park, museum, aquarium, or plaza, located in the vicinity of a convention center or convention center facility owned by a municipality or a county;

(iii) a tourist development area along an inland waterway;

(iv) a municipal parks and recreation system, or improvements or additions to a parks and recreation system, or an area or facility that is part of a municipal parks and recreation system;

(v) a project authorized by Section 4A or 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), as that Act existed on September 1, 1997; and

(vi) a watershed protection and preservation project; a recharge, recharge area, or recharge feature protection project; a conservation easement; or an open-space preservation program intended to protect water.

(2) Requirements to initiate a request for rebate, refund, or payment of taxes for a qualified project located in a project financing zone.

(A) The municipality must submit a written request to the comptroller's Audit Division along with the following information, as applicable:

(i) a copy of the approval from the municipality of the project financing zone's designation;

(ii) documentation showing that the qualified project has commenced;

(iii) a map that shows the boundaries of the project financing zone and identifies all active hotels located within those boundaries;

(iv) the name and address of each hotel located within the project financing zone along with the comptroller-issued

taxpayer identification and location numbers that each hotel is using to report sales and use tax, hotel occupancy tax, mixed beverage gross receipts tax, and mixed beverage sales tax;

(v) the names and comptroller-issued taxpayer identification and location numbers for all shops, parking facilities, and other facilities that are located in hotels within a project financing zone;

(vi) when there are fewer than four taxpayers with active sales and use tax permits or mixed beverage permits operating within a project financing zone, a waiver of confidentiality release signed by the authorized officer or director from each sales and use tax permittee and mixed beverage tax permittee located at a hotel in the project financing zone allowing the comptroller to release the sales and use tax and mixed beverage sales tax information to the municipality. A waiver of confidentiality release must be renewed annually, unless it specifically states a longer period not to exceed three years;

(vii) the name and telephone numbers of the contact person with the municipality; and

(viii) a completed direct deposit authorization form from the municipality.

(B) If a municipality designates one project financing zone in which multiple qualified projects are located, the comptroller will consider the boundaries of the project-financing zone to be a distance of a three-mile radius from the center of each of the qualified projects.

(i) The hotel-associated revenue collected from all hotels located in the project financing zone shall be included in the zone's incremental hotel-associated revenue.

(ii) Payments to the municipality under clause (i) of this subparagraph will begin on the date the municipality notifies the comptroller in writing that the first qualified project has commenced.

(C) The comptroller will give the requestor written notice of the results of the request to initiate rebate, refund, or payment of taxes for a qualified project in a project financing zone.

(3) Tax rebates for qualified projects located in project financing zones.

(A) A municipality with a population of at least 650,000 but less than 750,000, according to the most recent federal decennial census, or a municipality with a population of 1,180,000 or more that is located predominantly in a county that has a total area of less than 1,000 square miles and that has adopted a council-manager form of government, may pledge incremental hotel-associated revenue received from hotels located in a project financing zone for the payment of bonds and obligations issued to acquire, lease, construct, improve, enlarge, and equip a qualified project.

(B) The municipality may designate a project financing zone. The municipality must notify the comptroller of the designation of the project financing zone not later than the 30 days after the date the municipality designates the project financing zone.

(i) The boundaries of a project financing zone must be within a three-mile radius of the center of a qualified project and must be within the corporate limits of the municipality.

(ii) The designation of the project financing zone must include the longitude and latitude of the center of the qualified project.

(C) The municipality is entitled to receive the incremental hotel-associated revenue from hotels located in the project financing zone beginning the first day of the year after the year of the zone's date of designation.

(i) Payments of the incremental hotel-associated revenue end on the last day of the month during which the designation of a project financing zone expires.

(ii) The designation of a project financing zone expires not later than 30 years from the anniversary month in which the zone was designated.

(D) Beginning the first day of the year after the year of the zone's date of designation, the comptroller shall deposit incremental hotel-associated revenue collected or received in a separate trust account.

(i) Payments from the trust account to the municipality begin on the date a qualified project has commenced and the municipality has provided the comptroller with the documentation required under paragraph (2) of this subsection.

(ii) If the qualified project has not commenced by the fifth anniversary of the first deposit to the account, the comptroller shall stop making deposits and transfer the money in the account to the general revenue fund.

(iii) The comptroller may estimate the amount of incremental hotel-associated revenue that will be deposited for the calendar year and deposit that amount to the trust account. The calculation of the estimated incremental hotel-associated revenue is based on the base year amount, less the previous year revenue amount for year one revenue estimates. The next year's incremental difference is based on the revenue from the previous year and the base year. The municipality may request disbursements on a monthly basis based on the estimate. The comptroller must adjust deposits and disbursements to reflect the amount of revenue actually deposited at the end of each calendar year.

(iv) A municipality must notify the comptroller if a qualified project is abandoned. The comptroller shall transfer to the general revenue fund the amount of money in the trust account that exceeds the amount needed for payment of bonds or other obligations issued or incurred under subparagraphs (A) and (C) of this paragraph.

(c) Qualified hotel projects.

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

(A) Convention center facilities--Facilities that are primarily used to host conventions and meetings. The term means civic centers, civic center buildings, auditoriums, exhibition halls, and coliseums that are owned by the municipality or other governmental entity or that are managed in whole or part by the municipality. The term includes parking areas or facilities that are for the parking or storage of conveyances and that are located at or in the vicinity of other convention center facilities.

(B) Eligible tax proceeds--Local ad valorem taxes, local sales and use taxes, local hotel occupancy taxes, local mixed beverage gross receipts taxes, and local mixed beverage sales taxes that are generated, paid, or collected by a qualified hotel project, or facilities ancillary to the hotel, and that may be rebated, refunded, or paid to the owner of a qualified hotel project under an agreement with a municipality, county, or other governmental entity.

(C) Facility ancillary to the hotel--A facility located within 1,000 feet of a convention center facility owned by a municipality, as measured from the closest exterior wall of the ancillary facility in a single-tenant building or closest demising wall of the

ancillary facility in a multi-tenant building to the closest exterior wall of the convention center facility, that is located in a qualified hotel project, and which provides necessary support for the operation and function of the hotel. Surface parking lot facilities must be located within 1,000 feet of the convention center facility, as measured from the closest marked parking space of a surface parking lot facility to the closest exterior wall of the convention center facility. Surface parking lot facilities intersected by a public road or thoroughfare are considered separate parking facilities. Only a parking lot facility that contains a marked parking space within 1,000 feet of the convention center facility will be eligible for rebates. The term includes facilities ancillary to a hotel that are part of the hotel project but that may be completed in different phases of the hotel project as evidenced by documentation listed in paragraph (2) of this subsection. The term does not include existing facilities located within 1,000 feet of the convention center facility that were not constructed, developed, or remodeled as part of the qualified hotel project.

(D) Governmental body--A local governmental body with the authority to impose taxes.

(E) Nonprofit municipally sponsored local government corporation--A corporation created under the Texas Transportation Corporation Act, Transportation Code, Chapter 431 (Texas Transportation Corporation Act). This definition also applies to the term "municipally sponsored local government corporation."

(F) Open for initial occupancy--The earliest date on which a member of the public obtains sleeping accommodations for consideration and the convention center is operational, as supported by records of the hotel and convention center.

(G) Qualified hotel project--A hotel proposed to be constructed, or being constructed, by a municipality or nonprofit municipally sponsored local government corporation, including a privately owned or existing hotel selected by a municipality, that is located within 1,000 feet of a convention center owned by a municipality having a population of 1,500,000 or more, including shops, parking facilities, and any other facilities ancillary to the hotel. The parking lot is not part of a convention center facility for the purpose of measuring the 1,000-foot distance requirement.

(2) Requirements to initiate a request for rebate, refund, or payment of taxes for a qualified hotel project.

(A) The owner of a qualified hotel project seeking a refund from the comptroller of state sales and use taxes, state hotel occupancy taxes, and eligible tax proceeds must submit a written request to the comptroller's Audit Division along with the following information, as applicable:

(i) a copy of the certificate of formation for the nonprofit municipally sponsored local government corporation;

(ii) a copy of the municipality's ordinance approving the rebate agreement between the municipality or nonprofit municipally sponsored local government corporation and the qualified hotel project;

(iii) a copy of the architect's plan for the qualified hotel project;

(iv) a map that shows the required distances between the qualified hotel project, including facilities ancillary to the hotel, and the convention center facility;

(v) records from the hotel, convention center, and municipality, such as guest folios and press releases, which show the date when the qualified hotel project was open for initial occupancy;

(vi) the name and address of the hotel and the comptroller-issued taxpayer identification and location numbers that the hotel is using, or will use, to report sales and use tax, hotel occupancy tax, mixed beverage gross receipts tax, and mixed beverage sales tax;

(vii) the name and comptroller-issued taxpayer identification and location numbers of each facility ancillary to the hotel;

(viii) waiver of confidentiality releases signed by the authorized officer or director of the hotel and each facility ancillary to the hotel allowing the comptroller to release the facility's sales and use tax and mixed beverage sales tax information to the owner of the qualified hotel project, the municipality, or the nonprofit municipally sponsored local government corporation. A waiver of confidentiality release must be renewed annually, unless it specifically states a longer period not to exceed three years;

(ix) the name and telephone numbers of the contact person for the qualified hotel project, the municipality, or the nonprofit municipally sponsored local government corporation; and

(x) a completed direct deposit authorization form from the owner of the qualified hotel project, the municipality, or the nonprofit municipally sponsored local government corporation.

(B) The comptroller will give the requestor written notice of the results of the request to initiate rebate, refund, or payment of taxes for a qualified hotel project.

(3) Tax rebates for qualified hotel projects.

(A) The owner of a qualified hotel project is entitled to receive 100% of the state sales and use tax and state hotel occupancy tax paid or collected by the qualified hotel project, and eligible tax proceeds, during the first 10 years after the qualified hotel project is open for initial occupancy. The tax rebate period ends on the tenth anniversary of the date the hotel project opened for initial occupancy. The comptroller does not have the authority to issue tax rebates until the project is open for initial occupancy.

(B) Pursuant to Government Code, §2303.5055, the comptroller can only rebate eligible tax proceeds that a governmental body has agreed to rebate. The agreement must be in writing and specify that the comptroller rebate the eligible tax proceeds to the owner of the qualified hotel project.

(C) Multiple qualified hotel projects.

(i) A municipality described in paragraph (1)(G) of this subsection may designate more than one qualified hotel project.

(ii) After a facility ancillary to the hotel has entered into a tax rebate agreement with a qualified hotel project, the ancillary facility cannot associate with another qualified hotel project to extend the 10-year tax rebate period in subparagraph (A) of this paragraph.

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 20, 2019.

TRD-201900616
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Effective date: March 12, 2019
Proposal publication date: November 23, 2018
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.15

The Texas Department of Public Safety (the department) adopts amendments to §4.15, concerning Safety Audit Program. This rule is adopted without changes to the proposed text as published in the December 28, 2018, issue of the *Texas Register* (43 TexReg 8562) and will not be republished.

The proposed amendments are necessary to harmonize §4.15 with federal regulations in 49 CFR §§385.11, 385.13, and 385.17. These changes harmonize timeline requirements regarding carrier safety fitness ratings and operating restrictions following "unsatisfactory" safety ratings. Additionally, nonsubstantive grammatical and capitalization changes have been made.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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 25, 2019.

TRD-201900644
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 17, 2019
Proposal publication date: December 28, 2019
For further information, please call: (512) 424-5848

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CHAPTER 5. CRIMINAL LAW ENFORCEMENT

SUBCHAPTER C. THREATS AGAINST PEACE OFFICERS AND DETENTION OFFICERS

37 TAC §§5.31 - 5.38

The Texas Department of Public Safety (the department) adopts amendments to §§5.31 - 5.38, concerning Threats Against Peace Officers And Detention Officers. These rules are adopted without changes to the proposed text as published in the January 18, 2019, issue of the *Texas Register* (44 TexReg 325) and will not be republished.

These amendments reflect updates necessitated by Texas Government Code, §411.048 by adding detention officer as an eligible individual for a Threat Against Peace Officer (TAPO) entry into the Texas Crime Information Center (TCIC) database. Additional updates, including changing the title of Subchapter C to "Threats Against Peace Officers and Detention Officers," are nonsubstantive and are made to improve the readability of the sections.

No comments were received regarding the adoption of this rule.

These rules are adopted pursuant to Texas Government Code, §411.048 (e) and (i), which provide that the director shall adopt rules to prescribe the form and manner to be used by a criminal justice agency reporting to the department its determination of a serious threat against a peace or detention officer, to prescribe how an agency may use information disseminated to it by the department and to require compliance with general federal intelligence guidelines.

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 25, 2019.

TRD-201900645
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 17, 2019
Proposal publication date: January 18, 2019
For further information, please call: (512) 424-5848

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CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.50

The Texas Department of Public Safety (the department) adopts new §15.50, concerning State-to-State Verification Service. This rule is adopted without changes to the proposed text as published in the December 28, 2018, issue of the *Texas Register* (43 TexReg 8566) and will not be republished.

The new rule is intended to inform applicants for driver licenses (DL) and identification certificates (ID) that Texas will utilize the State-to-State Verification Service (S2S) to determine if an applicant holds a DL or ID in another state or U.S. jurisdiction. Texas Transportation Code, Chapter 521 requires the surrender of DLs and IDs issued by Texas, other states, or other U.S. jurisdictions before issuance of a Texas DL or ID. The new rule consolidates the various provisions related to DL or ID surrender in Chapter 521 to clarify the requirements related to the surrender of a previ-

ously issued DL or ID. Additionally, if the department determines through S2S that the applicant holds a DL or ID in another state or U.S. jurisdiction, the applicant will be required to surrender that document prior to issuance of a Texas DL or ID.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Texas Transportation Code; Texas Transportation Code, §521.182, which requires surrender of a license issued by another jurisdiction; Texas Transportation Code, §521.183, which requires surrender of a DL or ID issued by this state; and Texas Transportation Code, §521.142(e), which authorizes the department to determine eligibility for a DL or ID.

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 22, 2019.

TRD-201900629
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 14, 2019
Proposal publication date: December 28, 2018
For further information, please call: (512) 424-5848

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CHAPTER 37. SEX OFFENDER REGISTRATION

37 TAC §37.3

The Texas Department of Public Safety (the department) adopts new §37.3, concerning Minimum Required Registration Period.

This rule is adopted without changes to the proposed text as published in the December 28, 2018, issue of the *Texas Register* (43 TexReg 8567) and will not be republished.

Texas Code of Criminal Procedure, Article 62.402(a), directs the department to determine by rule the minimum required registration period under federal law for each reportable conviction or adjudication that requires registration as a sex offender. Registrants with a reportable conviction or adjudication that must register under Texas law for a period that exceeds the minimum required registration period under federal law may petition their trial court for early termination of their obligation to register as a sex offender.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Code of Criminal Procedure, Article 62.402(a), which authorizes the department to determine the minimum required registration period under federal law for each reportable conviction or adjudication under Chapter 62.

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 22, 2019.

TRD-201900630
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: March 14, 2019
Proposal publication date: December 28, 2018
For further information, please call: (512) 424-5848

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission (Commission) readopts with amendments the rules in 13 Texas Administrative Code Chapter 3, State Publications Depository Program. The amended rules will appear in the March 8, 2019, issue of the *Texas Register.*

The Commission reviewed the following rules:

CHAPTER 3 STATE PUBLICATIONS DEPOSITORY PROGRAM

§3.1 Definitions

§3.2 Standard Requirements for State Publications in All Formats

§3.3 Standard Deposit and Reporting Requirements for State Publications in Physical Formats

§3.4 Standard Deposit and Reporting Requirements for State Publications that are Internet Publications

§3.5 Standard Exemptions for State Publications in All Formats

§3.6 Special Exemptions

§3.7 State Publications Contact Person

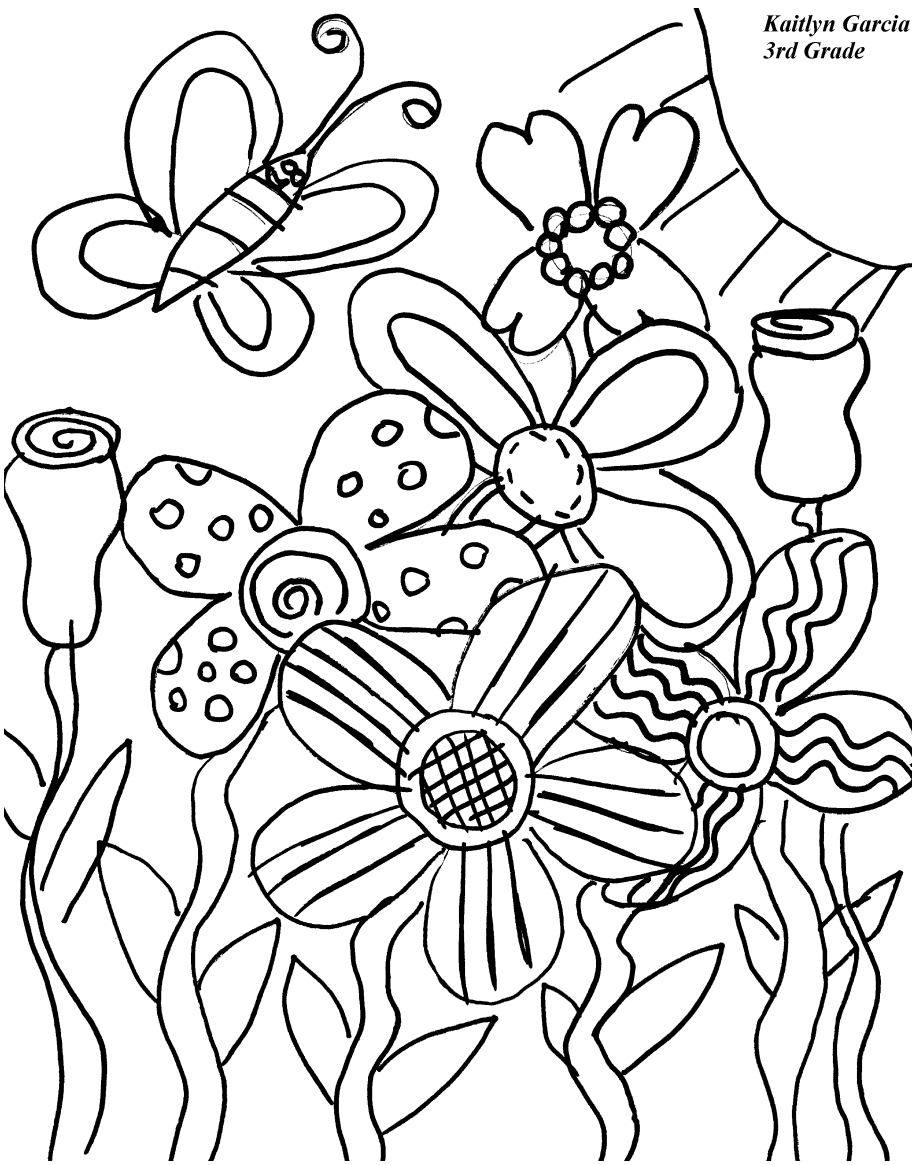
§3.8 Designation and Termination of Depository Library Status for State Publications in Physical Formats

No comments were received.

TRD-201900695
Jelain Chubb
Director
Texas State Library and Archives Commission
Filed: February 27, 2019

♦ ♦ ♦

Kaitlyn Garcia
3rd Grade



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §401.307(g)(4)

Exact Order

Exact with 3 different numbers

	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$250.00	$500.00	$1,000.00	$1,500.00	$2,000.00	$2,500.00
Base Game Odds 1 in 1,000						

Exact with 2 like numbers and 1 different number

	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$250.00	$500.00	$1,000.00	$1,500.00	$2,000.00	$2,500.00
Base Game Odds 1 in 1,000						

Exact with 3 like numbers

	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$250.00	$500.00	$1,000.00	$1,500.00	$2,000.00	$2,500.00
Base Game Odds 1 in 1,000						

Fireball Exact with 3 different numbers

	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (1 Win)	$90.00	$180.00	$360.00	$540.00	$720.00	$900.00

Fireball Exact with 2 like numbers and 1 different number

	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (2 Wins)	$180.00	$360.00	$720.00	$1,080.00	$1,440.00	$1,800.00
Fireball Prize (1 Win)	$90.00	$180.00	$360.00	$540.00	$720.00	$900.00

Fireball Exact with 3 like numbers

	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (3 Wins)	$270.00	$540.00	$1,080.00	$1,620.00	$2,160.00	$2,700.00
Prize (1 Win)	$90.00	$180.00	$360.00	$540.00	$720.00	$900.00

Fireball Example

Example Wager of 1-2-3	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
333	1-2-9	3

Fireball Example

Example Wager of 1-2-2	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
10,000	1-2-2	2
357	4-2-2	1

Fireball Example

Example Wager of 1-1-1	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
10,000	1-1-1	1
370	1-3-1	1

Figure: 16 TAC §401.307(g)(5)

3-Way Any Order	*Any with 2 like numbers and 1 different number*					
	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$80.00	$160.00	$320.00	$480.00	$640.00	$800.00
Base Game Odds 1 in 333						

Fireball Any with 2 like numbers and 1 different number						
	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (3 Wins)	$90.00	$180.00	$360.00	$540.00	$720.00	$900.00
Fireball Prize (2 Wins)	$60.00	$120.00	$240.00	$360.00	$480.00	$600.00
Fireball Prize (1 Win)	$30.00	$60.00	$120.00	$180.00	$240.00	$300.00

Fireball Example		
Example Wager of 1-2-2	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
10,000	2-2-2	1
1,667	1-1-2	2
133	0-1-2	2

Figure: 16 TAC §401.307(g)(6)

6-Way Any Order	*Any with 3 different numbers*						*Fireball Any with 3 different numbers*							*Fireball Example*		
	Cost Per Play						Cost Per Play with Fireball							Example Wager of 1-2-3	Example Draw with this Outcome	
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00		$1.00	$2.00	$4.00	$6.00	$8.00	$10.00	Odds 1 in	Base Draw	Fireball Draw
Base Prize	$40.00	$80.00	$160.00	$240.00	$320.00	$400.00	Fireball Prize (2 Wins)	$30.00	$60.00	$120.00	$180.00	$240.00	$300.00	556	1-1-2	3
Base Game Odds 1 in 167							Fireball Prize (1 Win)	$15.00	$30.00	$60.00	$90.00	$120.00	$150.00	69	0-1-3	2

Figure: 16 TAC §401.307(g)(7)

Exact Order/3-Way Any Order	***Exact/Any with 2 like numbers and 1 different number***					
	Base Play Amount					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
	Cost Per Play					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Exact Order Prize	$330.00	$660.00	$1,320.00	$1,980.00	$2,640.00	$3,300.00
Not in Exact Order Prize	$80.00	$160.00	$320.00	$480.00	$640.00	$800.00
Base Game Odds 1 in 333						

Fireball Exact/Any with 2 like numbers and 1 different number								
			Cost Per Play with Fireball					
	Any Wins	Exact Wins	$2.00	$4.00	$8.00	$12.00	$16.00	$20.00
Fireball Prize	2	2	$240.00	$480.00	$960.00	$1,440.00	$1,920.00	$2,400.00
Fireball Prize	3	1	$180.00	$360.00	$720.00	$1,080.00	$1,440.00	$1,800.00
Fireball Prize	2	1	$150.00	$300.00	$600.00	$900.00	$1,200.00	$1,500.00
Fireball Prize	2	0	$60.00	$120.00	$240.00	$360.00	$480.00	$600.00
Fireball Prize	1	1	$120.00	$240.00	$480.00	$720.00	$960.00	$1,200.00
Fireball Prize	1	0	$30.00	$60.00	$120.00	$180.00	$240.00	$300.00

Fireball Example		
Example Wager of 1-2-2	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
10,000	1-2-2	2
10,000	2-2-2	1
5,000	1-1-2	2
3,333	2-1-1	2
400	0-2-2	1
200	0-1-2	2

Figure: 16 TAC §401.307(g)(8)

Exact Order/6-Way Any Order ***Exact/Any with 3 different numbers***

	Base Play Amount					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
	Cost Per Play					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Exact Order Prize	$290.00	$580.00	$1,160.00	$1,740.00	$2,320.00	$2,900.00
Not in Exact Order Prize	$40.00	$80.00	$160.00	$240.00	$320.00	$400.00

Base Game Odds 1 in 167

Fireball Exact/Any with 3 different numbers

			Cost Per Play with Fireball					
	Any Wins	Exact Wins	$2.00	$4.00	$8.00	$12.00	$16.00	$20.00
Fireball Prize	2	1	$120.00	$240.00	$480.00	$720.00	$960.00	$1,200.00
Fireball Prize	1	1	$105.00	$210.00	$420.00	$630.00	$840.00	$1,050.00
Fireball Prize	2	0	$30.00	$60.00	$120.00	$180.00	$240.00	$300.00
Fireball Prize	1	0	$15.00	$30.00	$60.00	$90.00	$120.00	$150.00

Fireball Example

Example Wager of 1-2-3	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
1,667	1-1-3	2
417	0-2-3	1
833	1-1-2	3
83	0-1-2	3

Figure: 16 TAC §401.307(g)(9)

Combo	*Combo with 2 like numbers and 1 different number*					
	Base Play Amount					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
	Cost Per Play					
	$1.50	$3.00	$6.00	$9.00	$12.00	$15.00
Base Prize	$250.00	$500.00	$1,000.00	$1,500.00	$2,000.00	$2,500.00
Base Game Odds 1 in 333						

Fireball Combo with 2 like numbers and 1 different number						
	Cost Per Play with Fireball					
	$3.00	$6.00	$12.00	$18.00	$24.00	$30.00
Fireball Prize (3 Wins)	$270.00	$540.00	$1,080.00	$1,620.00	$2,160.00	$2,700.00
Fireball Prize (2 Wins)	$180.00	$360.00	$720.00	$1,080.00	$1,440.00	$1,800.00
Fireball Prize (1 Win)	$90.00	$180.00	$360.00	$540.00	$720.00	$900.00

Fireball Example		
Example Wager of 1-2-2	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
10,000	2-2-2	1
1,667	1-1-2	2
133	0-1-2	2

Combo with 3 different numbers						
	Base Play Amount					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
	Cost Per Play					
	$3.00	$6.00	$12.00	$18.00	$24.00	$30.00
Base Prize	$250.00	$500.00	$1,000.00	$1,500.00	$2,000.00	$2,500.00
Base Game Odds 1 in 167						

FIREBALL Combo with 3 different numbers						
	Cost Per Play with Fireball					
	$6.00	$12.00	$24.00	$36.00	$48.00	$60.00
Fireball Prize (2 Wins)	$180.00	$360.00	$720.00	$1,080.00	$1,440.00	$1,800.00
Fireball Prize (1 Win)	$90.00	$180.00	$360.00	$540.00	$720.00	$900.00

Fireball Example		
Example Wager of 1-2-3	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
556	1-1-2	3
69	0-1-3	2

Figure: 16 TAC §401.316(g)(4)

Straight

Straight with 4 like numbers

	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$2,500.00	$5,000.00	$10,000.00	$15,000.00	$20,000.00	$25,000.00
Base Game Odds 1 in 10,000						

Straight with 2 sets of 2 like numbers

	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$2,500.00	$5,000.00	$10,000.00	$15,000.00	$20,000.00	$25,000.00
Base Game Odds 1 in 10,000						

Straight with 3 like numbers and 1 different number

	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$2,500.00	$5,000.00	$10,000.00	$15,000.00	$20,000.00	$25,000.00
Base Game Odds 1 in 10,000						

Straight with all 4 numbers different

	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$2,500.00	$5,000.00	$10,000.00	$15,000.00	$20,000.00	$25,000.00
Base Game Odds 1 in 10,000						

Straight with 2 like numbers and 2 different numbers

	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$2,500.00	$5,000.00	$10,000.00	$15,000.00	$20,000.00	$25,000.00
Base Game Odds 1 in 10,000						

Fireball Straight with 4 like numbers

	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (4 Wins)	$2,700.00	$5,400.00	$10,800.00	$16,200.00	$21,600.00	$27,000.00
Fireball Prize (1 Win)	$675.00	$1,350.00	$2,700.00	$4,050.00	$5,400.00	$6,750.00

Fireball Straight with 2 sets of 2 like numbers

	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (2 Wins)	$1,350.00	$2,700.00	$5,400.00	$8,100.00	$10,800.00	$13,500.00
Fireball Prize (1 Win)	$675.00	$1,350.00	$2,700.00	$4,050.00	$5,400.00	$6,750.00

Fireball Straight with 3 like numbers and 1 different number

	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (3 Wins)	$2,025.00	$4,050.00	$8,100.00	$12,150.00	$16,200.00	$20,250.00
Fireball Prize (1 Win)	$675.00	$1,350.00	$2,700.00	$4,050.00	$5,400.00	$6,750.00

Fireball Straight with all 4 numbers different

	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (1 Win)	$675.00	$1,350.00	$2,700.00	$4,050.00	$5,400.00	$6,750.00

Fireball Straight with 2 like numbers and 2 different numbers

	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (2 Wins)	$1,350.00	$2,700.00	$5,400.00	$8,100.00	$10,800.00	$13,500.00
Fireball Prize (1 Win)	$675.00	$1,350.00	$2,700.00	$4,050.00	$5,400.00	$6,750.00

Fireball Example

Example Wager of 1-1-1-1	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
100,000	1-1-1-1	1
2,778	1-4-1-1	1

Fireball Example

Example Wager of 1-2-1-2	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
50,000	1-2-1-2	2
2,778	0-2-1-2	1

Fireball Example

Example Wager of 1-2-2-2	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
100,000	1-2-2-2	2
2,703	1-2-7-2	2

Fireball Example

Example Wager of 1-2-3-4	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
2,500	1-2-8-4	3

Fireball Example

Example Wager of 1-2-2-4	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
100,000	1-2-2-4	2
2,632	1-3-2-4	2

Figure: 16 TAC §401.316(g)(5)

4-Way Box	*Box with 3 like numbers and 1 different number*					
	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$600.00	$1,200.00	$2,400.00	$3,600.00	$4,800.00	$6,000.00
Base Game Odds 1 in 2,500						

Fireball Box with 3 like numbers and 1 different number						
	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (4 Wins)	$680.00	$1,360.00	$2,720.00	$4,080.00	$5,440.00	$6,800.00
Fireball Prize (3 Wins)	$510.00	$1,020.00	$2,040.00	$3,060.00	$4,080.00	$5,100.00
Fireball Prize (2 Wins)	$340.00	$680.00	$1,360.00	$2,040.00	$2,720.00	$3,400.00
Fireball Prize (1 Win)	$170.00	$340.00	$680.00	$1,020.00	$1,360.00	$1,700.00

Fireball Example		
Example Wager of 1-2-2-2	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
100,000	2-2-2-2	1
25,000	2-2-1-2	2
16,667	2-2-1-1	2
758	1-2-5-2	2

Figure: 16 TAC §401.316(g)(6)

6-Way Box	*Box with 2 sets of 2 like numbers*					
	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$400.00	$800.00	$1,600.00	$2,400.00	$3,200.00	$4,000.00
Base Game Odds 1 in 1,667						

Fireball Box with 2 sets of 2 like numbers						
	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (3 Wins)	$336.00	$672.00	$1,344.00	$2,016.00	$2,688.00	$3,360.00
Fireball Prize (2 Wins)	$224.00	$448.00	$896.00	$1,344.00	$1,792.00	$2,240.00
Fireball Prize (1 Win)	$112.00	$224.00	$448.00	$672.00	$896.00	$1,120.00

Fireball Example			
Example Wager of 1-2-1-2	Example Draw with this Outcome		
Odds 1 in	Base Draw	Fireball Draw	
12,500	1-1-1-2	2	
8,333	2-1-2-1	2	
521	9-2-2-1	1	

Figure: 16 TAC §401.316(g)(7)

12-Way Box	*Box with 2 like numbers and 2 different numbers*					
	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$200.00	$400.00	$800.00	$1,200.00	$1,600.00	$2,000.00
Base Game Odds 1 in 833						

Fireball Box with 2 like numbers and 2 different numbers						
	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (3 Wins)	$168.00	$336.00	$672.00	$1,008.00	$1,344.00	$1,680.00
Fireball Prize (2 Wins)	$112.00	$224.00	$448.00	$672.00	$896.00	$1,120.00
Fireball Prize (1 Win)	$56.00	$112.00	$224.00	$336.00	$448.00	$560.00

Fireball Example		
Example Wager of 1-2-2-3	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
12,500	3-2-2-2	1
2,083	2-2-1-1	3
278	7-3-2-2	1

Figure: 16 TAC §401.316(g)(8)

24-Way Box	*Box with 4 different numbers*						*Fireball Box with 4 different numbers*							*Fireball Example*		
	Cost Per Play							Cost Per Play with Fireball						Example Wager of 1-2-3-4	Example Draw with this Outcome	
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00		$1.00	$2.00	$4.00	$6.00	$8.00	$10.00	Odds 1 in	Base Draw	Fireball Draw
Base Prize	$100.00	$200.00	$400.00	$600.00	$800.00	$1,000.00	Fireball Prize (2 Wins)	$56.00	$112.00	$224.00	$336.00	$448.00	$560.00	694	4-1-4-2	3
Base Game Odds 1 in 417							Fireball Prize (1 Win)	$28.00	$56.00	$112.00	$168.00	$224.00	$280.00	149	9-4-3-2	1

Figure: 16 TAC §401.316(g)(9)

Straight/4-Way Box	*Straight/Box with 3 like numbers and 1 different number*					
	Base Play Amount					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
	Cost Per Play					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Exact Order Prize	$3,100.00	$6,200.00	$12,400.00	$18,600.00	$24,800.00	$31,000.00
Not in Exact Order Prize	$600.00	$1,200.00	$2,400.00	$3,600.00	$4,800.00	$6,000.00

Base Game Odds 1 in 2,500

Fireball Straight/Box with 3 like numbers and 1 different number								
			Cost Per Play with Fireball					
	Box Wins	Straight Wins	$2.00	$4.00	$8.00	$12.00	$16.00	$20.00
Fireball Prize	3	3	$2,535.00	$5,070.00	$10,140.00	$15,210.00	$20,280.00	$25,350.00
Fireball Prize	4	1	$1,355.00	$2,710.00	$5,420.00	$8,130.00	$10,840.00	$13,550.00
Fireball Prize	3	0	$510.00	$1,020.00	$2,040.00	$3,060.00	$4,080.00	$5,100.00
Fireball Prize	2	1	$1,015.00	$2,030.00	$4,060.00	$6,090.00	$8,120.00	$10,150.00
Fireball Prize	2	0	$340.00	$680.00	$1,360.00	$2,040.00	$2,720.00	$3,400.00
Fireball Prize	1	1	$845.00	$1,690.00	$3,380.00	$5,070.00	$6,760.00	$8,450.00
Fireball Prize	1	0	$170.00	$340.00	$680.00	$1,020.00	$1,360.00	$1,700.00

Fireball Example			
	Example Wager of 1-2-2-2	Example Draw with this Outcome	
	Odds 1 in	Base Draw	Fireball Draw
Fireball Prize	100,000	1-2-2-2	2
Fireball Prize	100,000	2-2-2-2	1
Fireball Prize	33,333	2-1-2-2	2
Fireball Prize	33,333	1-1-2-2	2
Fireball Prize	33,333	2-1-1-2	2
Fireball Prize	3,030	0-2-2-2	1
Fireball Prize	1,010	0-1-2-2	2

Figure: 16 TAC §401.316 (g)(10)

Straight/6-Way Box — ***Straight/Box with 2 sets of 2 like numbers***

	Base Play Amount					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
	Cost Per Play					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Exact Order Prize	$2,900.00	$5,800.00	$11,600.00	$17,400.00	$23,200.00	$29,000.00
Not in Exact Order Prize	$400.00	$800.00	$1,600.00	$2,400.00	$3,200.00	$4,000.00

Base Game Odds 1 in 1,667

Fireball Straight/Box with 2 sets of 2 like numbers

	Box Wins	Straight Wins	Cost Per Play with Fireball $2.00	$4.00	$8.00	$12.00	$16.00	$20.00
Fireball Prize	2	2	$1,574.00	$3,148.00	$6,296.00	$9,444.00	$12,592.00	$15,740.00
Fireball Prize	3	1	$1,011.00	$2,022.00	$4,044.00	$6,066.00	$8,088.00	$10,110.00
Fireball Prize	3	0	$336.00	$672.00	$1,344.00	$2,016.00	$2,688.00	$3,360.00
Fireball Prize	2	0	$224.00	$448.00	$896.00	$1,344.00	$1,792.00	$2,240.00
Fireball Prize	1	1	$787.00	$1,574.00	$3,148.00	$4,722.00	$6,296.00	$7,870.00
Fireball Prize	1	0	$112.00	$224.00	$448.00	$672.00	$896.00	$1,120.00

Fireball Example

Example Wager of 1-2-1-2	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
50,000	1-2-1-2	1
25,000	1-1-1-2	2
25,000	1-1-2-1	2
10,000	1-1-2-2	1
3,125	0-2-1-2	1
625	0-1-1-2	2

Figure: 16 TAC §401.316 (g)(11)

Straight/12-Way Box	*Straight/Box with 2 like numbers and 2 different numbers*					
	Base Play Amount					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
	Cost Per Play					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Exact Order Prize	$2,700.00	$5,400.00	$10,800.00	$16,200.00	$21,600.00	$27,000.00
Not in Exact Order Prize	$200.00	$400.00	$800.00	$1,200.00	$1,600.00	$2,000.00

Base Game Odds 1 in 833

	Fireball Straight/Box with 2 like numbers and 2 different numbers							*Fireball Example*		
			Cost Per Play with Fireball						Example Wager of 1-2-2-3	Example Draw with this Outcome	
	Box Wins	Straight Wins	$2.00	$4.00	$8.00	$12.00	$16.00	$20.00	Odds 1 in	Base Draw	Fireball Draw
Fireball Prize	3	1	$843.00	$1,686.00	$3,372.00	$5,058.00	$6,744.00	$8,430.00	50,000	1-2-2-2	3
Fireball Prize	3	0	$168.00	$336.00	$672.00	$1,008.00	$1,344.00	$1,680.00	16,667	2-1-2-2	3
Fireball Prize	2	2	$1,462.00	$2,924.00	$5,848.00	$8,772.00	$11,696.00	$14,620.00	100,000	1-2-2-3	2
Fireball Prize	2	1	$787.00	$1,574.00	$3,148.00	$4,722.00	$6,296.00	$7,870.00	16,667	1-1-2-3	2
Fireball Prize	1	1	$731.00	$1,462.00	$2,924.00	$4,386.00	$5,848.00	$7,310.00	3,333	0-2-2-3	1
Fireball Prize	2	0	$112.00	$224.00	$448.00	$672.00	$896.00	$1,120.00	2,439	1-1-2-2	3
Fireball Prize	1	0	$56.00	$112.00	$224.00	$336.00	$448.00	$560.00	303	0-1-2-2	3

Figure: 16 TAC §401.316(g)(12)

Straight/24-Way Box — ***Straight/Box with 4 different numbers***

	Base Play Amount					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
	Cost Per Play					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Exact Order Prize	$2,600.00	$5,200.00	$10,400.00	$15,600.00	$20,800.00	$26,000.00
Not in Exact Order Prize	$100.00	$200.00	$400.00	$600.00	$800.00	$1,000.00

Base Game Odds 1 in 417

Fireball Straight/Box with 4 different numbers

			Cost Per Play with Fireball					
	Box Wins	Straight Wins	$2.00	$4.00	$8.00	$12.00	$16.00	$20.00
Fireball Prize	2	1	$731.00	$1,462.00	$2,924.00	$4,386.00	$5,848.00	$7,310.00
Fireball Prize	1	1	$703.00	$1,406.00	$2,812.00	$4,218.00	$5,624.00	$7,030.00
Fireball Prize	2	0	$56.00	$112.00	$224.00	$336.00	$448.00	$560.00
Fireball Prize	1	0	$28.00	$56.00	$112.00	$168.00	$224.00	$280.00

Fireball Example

Example Wager of 1-2-3-4	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
8,333	1-1-3-4	2
3,571	0-2-3-4	1
758	1-1-2-3	4
155	0-1-2-3	4

Figure: 16 TAC §401.316(g)(13)

Combo	*Combo with 3 like numbers and 1 different number (4 way Combo)*					
	Base Play Amount					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
	Cost Per Play					
	$2.00	$4.00	$8.00	$12.00	$16.00	$20.00
Base Prize	$2,500.00	$5,000.00	$10,000.00	$15,000.00	$20,000.00	$25,000.00
Base Game Odds 1 in 2,500						

Fireball Combo with 3 like numbers and 1 different number (4 way Combo)						
	Cost Per Play with Fireball					
	$4.00	$8.00	$16.00	$24.00	$32.00	$40.00
Fireball Prize (4 Wins)	$2,700.00	$5,400.00	$10,800.00	$16,200.00	$21,600.00	$27,000.00
Fireball Prize (3 Wins)	$2,025.00	$4,050.00	$8,100.00	$12,150.00	$16,200.00	$20,250.00
Fireball Prize (2 Wins)	$1,350.00	$2,700.00	$5,400.00	$8,100.00	$10,800.00	$13,500.00
Fireball Prize (1 Win)	$675.00	$1,350.00	$2,700.00	$4,050.00	$5,400.00	$6,750.00

Fireball Example			
	Example Wager of 1-2-2-2	Example Draw with this Outcome	
	Odds 1 in	Base Draw	Fireball Draw
	100,000	2-2-2-2	1
	25,000	2-2-1-2	2
	16,667	2-2-1-1	2
	758	1-2-5-2	2

Combo with 2 sets of 2 like numbers (6 way Combo)						
	Base Play Amount					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
	Cost Per Play					
	$3.00	$6.00	$12.00	$18.00	$24.00	$30.00
Base Prize	$2,500.00	$5,000.00	$10,000.00	$15,000.00	$20,000.00	$25,000.00
Base Game Odds 1 in 1,667						

Fireball Combo with 2 sets of 2 like numbers (6 way Combo)						
	Cost Per Play with Fireball					
	$6.00	$12.00	$24.00	$36.00	$48.00	$60.00
Fireball Prize (3 Wins)	$2,025.00	$4,050.00	$8,100.00	$12,150.00	$16,200.00	$20,250.00
Fireball Prize (2 Wins)	$1,350.00	$2,700.00	$5,400.00	$8,100.00	$10,800.00	$13,500.00
Fireball Prize (1 Win)	$675.00	$1,350.00	$2,700.00	$4,050.00	$5,400.00	$6,750.00

Fireball Example			
	Example Wager of 1-2-1-2	Example Draw with this Outcome	
	Odds 1 in	Base Draw	Fireball Draw
	12,500	1-1-1-2	2
	8,333	2-1-2-1	2
	521	9-2-2-1	1

Combo with 2 like numbers and 2 different numbers (12 way Combo)						
	Base Play Amount					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
	Cost Per Play					
	$6.00	$12.00	$24.00	$36.00	$48.00	$60.00
Base Prize	$2,500.00	$5,000.00	$10,000.00	$15,000.00	$20,000.00	$25,000.00
Base Game Odds 1 in 833						

Fireball Combo with 2 like numbers and 2 different numbers (12 way Combo)						
	Cost Per Play with Fireball					
	$12.00	$24.00	$48.00	$72.00	$96.00	$120.00
Fireball Prize (3 Wins)	$2,025.00	$4,050.00	$8,100.00	$12,150.00	$16,200.00	$20,250.00
Fireball Prize (2 Wins)	$1,350.00	$2,700.00	$5,400.00	$8,100.00	$10,800.00	$13,500.00
Fireball Prize (1 Win)	$675.00	$1,350.00	$2,700.00	$4,050.00	$5,400.00	$6,750.00

Fireball Example			
	Example Wager of 1-2-2-3	Example Draw with this Outcome	
	Odds 1 in	Base Draw	Fireball Draw
	12,500	3-2-2-2	1
	2,083	2-2-1-1	3
	278	7-3-2-2	1

Combo with 4 different numbers (24 way Combo)						
	Base Play Amount					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
	Cost Per Play					
	$12.00	$24.00	$48.00	$72.00	$96.00	$120.00
Base Prize	$2,500.00	$5,000.00	$10,000.00	$15,000.00	$20,000.00	$25,000.00
Base Game Odds 1 in 417						

Fireball Combo with 4 different numbers (24 way Combo)						
	Cost Per Play with Fireball					
	$24.00	$48.00	$96.00	$144.00	$192.00	$240.00
Fireball Prize (2 Wins)	$1,350.00	$2,700.00	$5,400.00	$8,100.00	$10,800.00	$13,500.00
Fireball Prize (1 Win)	$675.00	$1,350.00	$2,700.00	$4,050.00	$5,400.00	$6,750.00

Fireball Example			
	Example Wager of 1-2-3-4	Example Draw with this Outcome	
	Odds 1 in	Base Draw	Fireball Draw
	694	4-1-4-2	3
	149	9-4-3-2	1

Figure: 16 TAC §401.316(g)(14)

Front-Pair, Mid-Pair, Back-Pair

Front-Pair, Mid-Pair, and Back-Pair with 2 like numbers

	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$25.00	$50.00	$100.00	$150.00	$200.00	$250.00
Base Game Odds 1 in 100						

Fireball Front-Pair, Mid-Pair, and Back-Pair with 2 like numbers

	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (4 Wins)	$28.00	$56.00	$112.00	$168.00	$224.00	$280.00
Fireball Prize (2 Wins)	$14.00	$28.00	$56.00	$84.00	$112.00	$140.00
Fireball Prize (1 Win)	$7.00	$14.00	$28.00	$42.00	$56.00	$70.00

Fireball Example

Example Wager of 1-1-x-x	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
1,000	1-1-3-5	1
111	1-1-3-5	7
56	1-6-9-4	1

Front-Pair, Mid-Pair, and Back-Pair with 2 different numbers

	Cost Per Play					
	$0.50	$1.00	$2.00	$3.00	$4.00	$5.00
Base Prize	$25.00	$50.00	$100.00	$150.00	$200.00	$250.00
Base Game Odds 1 in 100						

Fireball Front-Pair, Mid-Pair, and Back-Pair with 2 different numbers

	Cost Per Play with Fireball					
	$1.00	$2.00	$4.00	$6.00	$8.00	$10.00
Fireball Prize (3 Wins)	$21.00	$42.00	$84.00	$126.00	$168.00	$210.00
Fireball Prize (2 Wins)	$14.00	$28.00	$56.00	$84.00	$112.00	$140.00
Fireball Prize (1 Win)	$7.00	$14.00	$28.00	$42.00	$56.00	$70.00

Fireball Example

Example Wager of 1-2-x-x	Example Draw with this Outcome	
Odds 1 in	Base Draw	Fireball Draw
500	1-2-4-5	1
125	1-2-1-0	6
56	1-1-7-4	2

Figure: 22 TAC §80.4(a)

MAXIMUM PENALTIES TABLE

Category I (Serious Physical or Financial Harm to Patient): Up to revocation or suspension, and $1000 per day

Violation	Reference
Sexual misconduct	22 Texas Administrative Code (TAC) §79.1(1) Occupations Code (OC) §201.502(a)(7)
Lack of diligence or gross inefficient practice	22 TAC §79.2 OC §201.502(a)(7)
Practicing outside the scope of practice	22 TAC §§79.2, 78.1, 78.2 OC §§201.002, 201.502(a)(1), (18)
Unauthorized practice of acupuncture	22 TAC §78.14
Proved insane	OC §201.502(17)
Impaired licensee or applicant	22 TAC §79.4
Practicing chiropractic while intoxicated	OC §201.606(b)
Knowingly permitting an unlicensed person to practice	OC §§201.502(a)(10), 201.5025(a)(7)
Impersonating a licensed chiropractor	OC §201.502(a)(15)
Prescribe or administer a nontherapeutic treatment	OC §201.5026(a)(2)
Knowingly delegating chiropractic responsibility to unqualified persons	OC §201.5026(a)(5)
Procuring or assisting an abortion	OC §201.502(a)(6)
Habit of intemperance or drug addiction or other habit endangering life of patient	OC §201.502(a)(8)
Furnishing or prescribing controlled substances	OC §22 TAC §72.18(k)(5)
Physically harming or threatening to physically harm a patient	22 TAC §79.1(3) OC §201.502(a)(7)
Criminal conviction (sexual or violent in nature)	22 TAC §72.12(k)(4)(A)(B)(D)(F)-(I) OC §201.5065(a)(1)(C)
Practicing without obtaining a chiropractic license, or while expired or inactive	22 TAC §80.3(d) OC §201.301
Failure to comply with the Occupations Code Chapter 201, other law, board order, or rule	22 TAC §80.3(c) OC §§201.501, 201.502(a)(1)
Medicaid or Medicare fraud	OC §201.502(a)(2), (7) Human Resources Code §§36.002, 36.005
Failure to supervise duties of staff resulting in harm to patient	22 TAC §79.1(5)

Category II (Fraud and Lack of Diligence): Up to revocation and suspension, and $750 per day

Over-treating or overcharging a patient	22 TAC §79.1(2) OC §201.5026(a)(3) OC §101.203 Health and Safety Code §311.0025
Presenting or using license, certificate, or diploma or transcript illegally, fraudulently obtained, counterfeited, or altered	OC §201.502(a)(3)
Presenting untrue statement, document, or testimony to pass examination	OC §201.502(a)(4)
Directly or indirectly employing or associating with person committing the unlicensed practice of chiropractic	OC §201.502(a)(10)
Purchasing, selling, or bartering a chiropractic degree, license, certificate, diploma, or transcript relating to application to practice	OC §201.502(a)(12)
Intentionally or fraudulently altering a chiropractic license, certificate, or diploma	OC §201.502(a)(13)
Commit fraud or deception in taking or passing examination; impersonating or acting as proxy in examination	OC §§201.502(a)(14), 201.5025(a)(2)
Permitting a license to be used by another to practice	OC §201.502(a)(16)
Submission of false or misleading statement, document or certificate in application for licensure	OC §201.5025(a)(1)
Employs a person whose license to practice chiropractic has been suspended, canceled or revoked	OC §201.5025(a)(5)
Aiding or abetting the practice of chiropractic by a person not licensed by the board	OC §201.5025(a)(7)
Delegating authority to a licensee whose license has been suspended or revoked	22 TAC §78.3(h) OC §201.5025(a)(6)(A)
Delegating to a non-licensee authority to perform adjustments or manipulations	22 TAC §78.3(b), (f), (i), (j)
Failure to comply with downtime restrictions	22 TAC §80.3(f)
Solicitation or barratry	OC §§102.001, 102.006 OC §201.502(a)(20), (21)
Failure to respond to board inquiries	22 TAC §§79.1(9), 72.18(h), 80.1
Failure to report criminal conviction	22 TAC §72.18(f)
Criminal conviction (non-violent, non-sexual)	OC §53.021 OC §201.502(a)(5), 201.5065

Category III (General Violations): Up to suspension and $500 per day

Practicing with an expired license (nonrenewal due to default student loan)	22 TAC §72.14(i) OC §§201.301, 201.351, 201.354(f)
Practicing in noncompliance with continuing education requirements	22 TAC §73.2(g) OC §201.301
Association in the practice of chiropractic with a person whose license has been suspended, canceled, revoked; or convicted of the unlawful practice of chiropractic in any state	OC §201.5025(a)(6)
Failure to supervise chiropractic by a student or recent graduate	22 TAC §78.3(c), (d) OC §201.5026(a)(4)
Failure to maintain sanitary conditions or exposing a patient to unsanitary conditions	22 TAC §79.1(4)
Failure to comply with requirements or restrictions on prepaid treatment plans	22 TAC §75.5
Unauthorized disclosure of patient records	22 TAC §76.1 OC §§201.402, 201.405
Violation of patient confidentiality	OC §201.402(a)
Misleading claims, deception or fraud; Advertising a false statement that tends to mislead or deceive public	22 TAC §§77.2, 77.3 OC §201.502(a)(2), (9), (11) OC §101.201
Use of the term "physician," or "chiropractic physician"	OC §201.502(a)(22) OC §101.201(b)(9)
Failure to specify "chiropractor" or "D.C." in advertising	22 TAC §§77.2(f), 79.1(6)
Using "chiropractor" or "D.C." in advertising without holding a chiropractic license issued by the board	22 TAC §79.1(8) OC §§201.002(b)(4), 201.301
Using "chiropractor" or D.C." in advertising for services outside the scope of practice	22 TAC §§79.1(7), 77.2, 77.4
Failure to furnish patient records; Overcharging for copies of patient records	22 TAC §76.1 OC §201.405(f)
Failure to disclose charges to patient	22 TAC §79.1(2)(C) 101.351
Failure to maintain patient records	22 TAC §76.2
Failure to report out-of-facility practice	22 TAC §75.2
Failure to display the mandatory notice to public or current annual license renewal	22 TAC §75.6
Failure to clearly differentiate a chiropractic office or clinic from another business or enterprise	OC §201.502(a)(19)
Failure to complete continuing education	22 TAC §§73.1(b), 73.2
Failure to comply with spinal screenings requirements	22 TAC §78.5
Failure to report change of address	22 TAC §72.13

Failure to report *locum tenens* information	22 TAC §75.2(b)
Default on student loan	22 TAC §80.8 OC §56.003

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Request for Applications (RFA) for the Other Victim Assistance Grant (OVAG) Program

The Office of the Attorney General (OAG) is soliciting local and statewide applications for projects that provide victim-related services or assistance. The purpose of the OAG OVAG program is to provide funds, using a competitive allocation method, to programs that address the unmet needs of victims by maintaining or increasing their access to quality services.

Applicable Funding Source for OVAG:

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: Local units of government, non-profit agencies with 26 U.S.C. 501(c)(3) status and state agencies, including universities, are eligible to apply.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible Applicant; the application is not submitted in the manner and form required by the Application Kit; the application is submitted after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at *https://www.texasattorneygeneral.gov/divisions/grants.* Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. If an on-line account is not created, the Applicant will be unable to apply for funding. To create an on-line account, the Applicant must email the point of contact information to *Grants@oag.texas.gov* with the following information:

--First Name

--Last Name

--Email Address

--Organization Legal Name

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is $20,000 per fiscal year. The maximum amount for a local program is $42,000 per fiscal year. The maximum amount for a statewide program is $170,000 per fiscal year.

Grant Period- Up to Two Years: The grant contract period (term) is up to two years from September 1, 2019, through August 31, 2021, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Limited Volunteer Requirements: All non-governmental OVAG Applicants must have a volunteer component.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the Applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Lyndsay Ysla at *Grants@oag.texas.gov,* or (512) 936-0792.

TRD-201900690
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: February 26, 2019

♦ ♦ ♦

Request for Applications (RFA) for the Sexual Assault Prevention and Crisis Services (SAPCS)-State Program

The Office of the Attorney General (OAG) is soliciting applications from programs that provide services to victims of sexual assault.

Applicable Funding Source: The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: Sexual Assault Programs and State Sexual Assault Coalitions as defined by Texas Government Code, Section 420.003 and Statewide Programs as defined in the Application Kit.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible Applicant; the application is not submitted in the manner and form required by the Application Kit; the application is submitted after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at https://www.texasattorneygeneral.gov/divisions/grants. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. If an on-line account is not created, the Applicant will be unable to apply for funding. To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

First Name

Last Name

Email Address

Organization Legal Name

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: The minimum amount of funding for all programs is $85,000 per fiscal year. The maximum amounts of funding are as follows: new sexual assault program, statewide programs, and sexual assault coalitions $85,000 per fiscal year; currently funded sexual assault programs $250,000 per fiscal year; currently funded statewide programs $85,000; and state sexual assault coalitions $300,000 per fiscal year.

Regardless of the maximums stated above, a currently funded program may not apply, per fiscal year, for an amount higher than the SAPCS-State funds it received in fiscal year (FY) 2019. The award amount is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

A currently funded program is one that has an active grant contract for FY 2019. Previous grantees that were not funded in FY 2019, or that de-obligated their contracts in FY 2019, will be considered new Applicants for this Application Kit.

Grant Period-Up to Two Years: The grant contract period (term) is up to two years from September 1, 2019 through August 31, 2021, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Volunteer Requirements: All SAPCS-State projects must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the Applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Lyndsay Ysla at Grants@oag.texas.gov, or (512) 936-0792.

TRD-201900692
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: February 26, 2019

♦ ♦ ♦

Request for Applications (RFA) for the Victim Coordinator and Liaison Grant (VCLG) Program

The Office of the Attorney General (OAG) is soliciting applications for projects that provide victim-related services or assistance. The purpose of the OAG VCLG program is to fund the Victim Assistance Coordinator and Crime Victim Liaison positions for the purposes set forth in the Texas Code of Criminal Procedure, Article 56.04.

Applicable Funding Source for VCLG:

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: A local criminal prosecutor, defined as a district attorney, a criminal district attorney, a county attorney with felony responsibility, or a county attorney who prosecutes criminal cases, may apply for a grant to fund a Victim Assistance Coordinator (VAC) position. A local law enforcement agency, defined as the police department of a municipality or the sheriff's department of any county, may apply for a grant to fund a Crime Victim Liaison (CVL) position.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not submitted in the manner and form required by the Application Kit; the application is submitted after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit:

The OAG will post the Application Kit on the OAG's website at https://www.texasattorneygeneral.gov/divisions/grants. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. If an on-line account is not created, the Applicant will be unable to apply for funding. To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

First Name

Last Name

Email Address

Organization Legal Name

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is $20,000 per fiscal year. The maximum amount for a program is $42,000 per fiscal year.

Grant Period - Up to Two Years: The grant contract period (term) is up to two years from September 1, 2019 through August 31, 2021, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Lyndsay Ysla at Grants@oag.texas.gov, or (512) 936-0792.

TRD-201900691
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: February 26, 2019

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Texas Water 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. 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 Code.

Case Title and Court: *State of Texas v. Karishma Properties, Inc.;* Cause No. D-1-GN-17-006362; in the 201st Judicial District, Travis County, Texas.

Nature of suit and Defendant's operations: Defendant Karishma Properties, Inc., owns and operates a convenience store and fueling station in San Antonio, Bexar County, Texas, which failed to comply with an agreed administrative order and TCEQ rules regarding underground petroleum storage tanks ("USTs"). The State filed suit on behalf of the Texas Commission on Environmental Quality ("TCEQ") to address Defendant's alleged violations of the Water Code and TCEQ rules promulgated thereunder.

Proposed Agreed Final Judgment: The proposed Agreed Final Judgment ("Judgment") requires Defendant to pay to the State $6,000 in civil penalties and $3,000 in attorney's fees.

For a complete description of the proposed settlement, the complete Judgment should be reviewed. Requests for copies of the Judgment, and written comments on the proposed settlement, should be directed to Ian Lancaster, 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-201900624
Ryan Vassar
Chief, General Counsel Division
Office of the Attorney General
Filed: February 21, 2019

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/04/19 - 03/10/19 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/04/19 - 03/10/19 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 02/01/19 - 02/28/19 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 02/01/19 - 02/28/19 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 04/01/19 - 06/30/19 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 04/01/19 - 06/30/19 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of 04/01/19 - 06/30/19 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The lender credit card quarterly rate as prescribed by §346.101[1] for the period of 04/01/19 - 06/30/19 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of 04/01/19 - 06/30/19 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 04/01/19 - 06/30/19 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1] for the period of 04/01/19 - 06/30/19 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/19 - 03/31/1 is 5.50% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed §304.003 for the period of 03/01/19 - 03/31/19 is 5.50% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

[3] For variable rate commercial transactions only.

[4] Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201900689
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 26, 2019

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Texas Department of Criminal Justice

Correction of Error

The Texas Department of Criminal Justice adopted the repeal of 37 TAC §195.51, concerning Sex Offender Supervision, in the February 22, 2019, issue of the *Texas Register* (44 TexReg 868). Due to a *Texas Register* editing error, the effective date on page 868, first column, is shown as "March 24, 2019." The correct effective date of this filing is February 28, 2019.

TRD-201900632

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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 **April 8, 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 **April 8, 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: Brighton Manor Apartments, L.P.; DOCKET NUMBER: 2018-1606-PWS-E; IDENTIFIER: RN102698743; LOCATION: Blanco, Blanco County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of asbestos sampling to the executive director (ED) for the January 1, 2017 - December 31, 2017, monitoring period; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the ED by the tenth day of the month following the end of each quarter for the fourth quarter of 2017 through the second quarter of 2018; PENALTY: $340; ENFORCEMENT COORDINATOR: Soraya Bun, (512) 239-2695; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(2) COMPANY: Callahan County Water Supply Corporation; DOCKET NUMBER: 2018-1644-PWS-E; IDENTIFIER: RN101206522; LOCATION: Clyde, Callahan 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, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.5 milligrams per liter chloramine (measured as total chlorine) throughout the distribution system at all times; PENALTY: $72; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361)

825-3421; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2017-1562-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 115.722(c)(1), 116.115(c), and 122.143(4), Federal Operating Permit Number O2113, General Terms and Conditions and Special Terms and Conditions Number 16, New Source Review Permit Numbers 1504A, PSDTX748M1, and N148, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions, and failing to limit highly reactive volatile organic compounds emissions to 1,200 pounds per one-hour block period; PENALTY: $11,475; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,737; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3424; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2018-1424-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: chemical product manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 115.725(d)(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 1504A, PSDTX748M1, and N148, Special Conditions Number 13.D, Federal Operating Permit Number O2113, General Terms and Conditions and Special Conditions Numbers 1.A and 18, and Texas Health and Safety Code, §382.085(b), by failing to operate each monitoring system at least 95% of the time when the flare is operational, averaged over a calendar year; PENALTY: $3,063; ENFORCEMENT COORDINATOR: Robyn Babyak, (512) 239-1853; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Chris McFarlane; DOCKET NUMBER: 2018-0968-PST-E; IDENTIFIER: RN101843928; LOCATION: Poth, Wilson County; TYPE OF FACILITY: property with an out-of-service underground storage tank (UST); RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (3), by failing to ensure that an amended registration form is submitted to the TCEQ within 30 days after the date of ownership change; and 30 TAC §334.49(a)(2) and (c)(4)(C) and §334.54(b)(3) and TWC, §26.3475(d), by failing to ensure the corrosion protection system was operated and maintained in a manner that will ensure corrosion protection is continuously provided to the UST system, and failing to test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: $4,732; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: City of Alice; DOCKET NUMBER: 2018-1743-MSW-E; IDENTIFIER: RN101392496; LOCATION: Alice, Jim Wells County; TYPE OF FACILITY: surface water treatment plant; RULES VIOLATED: 30 TAC §327.3(b) and TWC, §26.039(b), by failing to notify the TCEQ as soon as possible but no later than 24 hours after the discovery of a spill or discharge; and 30 TAC §327.5(a)(6), by failing to properly manage waste generated from a spill or discharge; PENALTY: $1,461; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: DEAL DASH C-STORES, INCORPORATED dba 24/7 Xpresway; DOCKET NUMBER: 2018-1418-PST-E; IDENTIFIER: RN102248093; LOCATION: Denton, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(B) and (3), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks (USTs) within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; PENALTY: $10,125; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: EBENEZER WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-1548-MLM-E; IDENTIFIER: RN101238251; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B) and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.42(b)(7), by failing to properly cover the air release device on Well Number 3 with a 16-mesh or finer corrosion-resistant screen to preclude the possibility of submergence or entrance of contaminants; 30 TAC §290.42(e)(4)(C), by failing to provide forced air ventilation, which includes both high level and floor level screened and louvered vents, a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent, and a fan switch located outside, for enclosures containing more than one operating 150-pound cylinder of chlorine; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine; 30 TAC §290.46(f)(2), (3)(A)(i)(II), (ii)(II), and (iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; and 30 TAC §290.110(c)(4)(B), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once per day; PENALTY: $1,165; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Kuraray America, Incorporated; DOCKET NUMBER: 2018-1098-AIR-E; IDENTIFIER: RN100212216; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: ethylene vinyl alcohol copolymer resin manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 9576, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1561, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 16, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(G) and (H) and §122.143(4), FOP Number O1561, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; PENALTY: $12,942; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Lhoist North America of Texas, Ltd.; DOCKET NUMBER: 2018-1621-AIR-E; IDENTIFIER: RN100219856; LOCATION: Clifton, Bosque County; TYPE OF FACILITY: lime

production plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Federal Operating Permit Number O1108, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following permit issuance, and failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: OXY USA Incorporated; DOCKET NUMBER: 2018-1470-PWS-E; IDENTIFIER: RN103758470; LOCATION: Seminole, Gaines County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: $159; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(12) COMPANY: PARTNERS DEWATERING INTERNATIONAL, L.C.; DOCKET NUMBER: 2018-0753-MSW-E; IDENTIFIER: RN101999290; LOCATION: La Coste, Medina County; TYPE OF FACILITY: type V grease and grit trap facility; RULES VIOLATED: 30 TAC §30.213(a), by failing to have a licensed solid waste supervisor at the municipal solid waste (MSW) facility; 30 TAC §330.7(a) and (b) and MSW Registration Number 43011, Site Operating Plan (SOP), Waste Acceptance and Analysis, by failing to not cause, suffer, allow, or permit the unauthorized storage, processing, removal, or disposal of a solid waste at an unauthorized facility; 30 TAC §330.203(c)(2) and MSW Registration Number 43011, SOP, Waste Acceptance and Analysis, by failing to conduct analysis for benzene, lead, and total petroleum hydrocarbons on waste received at the facility; 30 TAC §330.205(b), by failing to dispose of facility generated waste at an authorized facility; 30 TAC §330.219(b)(2) and MSW Registration Number 43011, SOP, Training Requirements, by failing to maintain all inspection records and training procedures; 30 TAC §330.219(b)(6) and MSW Registration Number 43011, SOP, Measures for Controlling Prohibited Wastes, by failing to record and retain all documents, manifests, shipping documents, trip tickets, etc., involving special waste; and 30 TAC §330.219(b)(9) and MSW Registration Number 43011, SOP, Recordkeeping and Reporting Requirements, by failing to maintain records that justify, on a quarterly basis, that the relevant percentage of incoming waste is processed to recover recycled products for applicable facilities; PENALTY: $48,168; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Paso Del Norte Materials, LLC; DOCKET NUMBER: 2018-1102-AIR-E; IDENTIFIER: RN110098357; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: permanent hot mix asphalt plant; RULES VIOLATED: 30 TAC §101.201(e) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification no later than 24 hours after discovery of an excess opacity event; 30 TAC §111.143(1) and §116.615(2), Standard Permit Registration Number 149990, Requirements Numbers (1)(M), (3)(F), and (4)(B), and THSC, §382.085(b), by failing to not cause, suffer, allow, or permit material to be handled, transported, or stored without taking precautions to achieve maximum control of dust emissions; 30 TAC §116.115(b)(2)(G) and §116.615(9), Standard Permit Registration Number 149990, General Conditions Number (9), and THSC, §382.085(b), by failing to maintain all air pollution emission capture and abatement equipment in good working order and operating properly during normal plant operations; and 30 TAC §116.615(5), Standard Permit Registration Number 149990, General Conditions Number (5), and THSC, §382.085(b), by failing to submit notification prior to the commencement of operations; PENALTY: $4,375; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(14) COMPANY: PROPERTY OWNERS' ASSOCIATION OF TERLINGUA RANCH, INCORPORATED; DOCKET NUMBER: 2018-1187-PWS-E; IDENTIFIER: RN101256238; LOCATION: Terlingua, Brewster County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and (1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify and obtain approval of plans and specifications from the executive director (ED) prior to making any significant change to the facility's production, treatment, storage, pressure maintenance, or distribution facilities; and 30 TAC §290.41(c)(3)(A), by failing to furnish a copy of well completion data for review and approval by the ED prior to placing the Smith Well into service; PENALTY: $210; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(15) COMPANY: SYNTECH CHEMICALS INCORPORATED; DOCKET NUMBER: 2018-1748-AIR-E; IDENTIFIER: RN100664994; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical blending and batch processing facility; 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: $2,750; ENFORCEMENT COORDINATOR: Soraya Bun, (512) 239-2695; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: TEXAS TRANSEASTERN, INCORPORATED; DOCKET NUMBER: 2018-1617-PST-E; IDENTIFIER: RN106856883; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §115.221 and Texas Health and Safety Code, §382.085(b), by failing to control displaced vapors by a vapor control or a vapor balance system during the transfer of gasoline from a tank-truck tank into an underground storage tank; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Top of the Hill Properties, LLC; DOCKET NUMBER: 2018-1085-EAQ-E; IDENTIFIER: RN110457926; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: single family residence; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(18) COMPANY: Woot Services LLC; DOCKET NUMBER: 2018-0300-AIR-E; IDENTIFIER: RN109678086; LOCATION: Carrollton, Denton County; TYPE OF FACILITY: fabric printing operation; RULES VIOLATED: 30 TAC §101.10(b)(1) and (e) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial emissions inventory by March 31 of the following calendar year; 30 TAC §101.20(2) and §113.980, 40 Code of Federal Regulations (CFR) §63.4290, and THSC, §382.085(b), by failing to comply with the emissions limits of 40 CFR Part 63, Subpart OOOO after exceeding the major threshold for a single hazardous air pollutant on April 15, 2016; 30 TAC §101.20(2) and §113.980, 40

CFR §63.4310(c), and THSC, §382.085(b), by failing to submit the notification of compliance status no later than 30 days after the end of the initial compliance period; 30 TAC §101.20(2) and §113.980, 40 CFR §63.4311(a)(1)(iii), and THSC, §382.085(b), by failing to submit semiannual compliance reports no later than January 31st or July 31st following the compliance period; 30 TAC §115.121(a)(1) and §115.122(a)(1) and THSC, §382.085(b), by failing to control vent gas streams emitting volatile organic compounds; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing, operating, or modifying a source of air contaminants; and 30 TAC §122.121 and THSC, §382.054, §382.085(b), by failing to obtain a federal operating permit prior to operating emission units at a major source; PENALTY: $303,375; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $121,350; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201900675
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 26, 2019

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Enforcement Orders

An agreed order was adopted regarding Kleberg County, Docket No. 2016-0567-MWD-E on February 26, 2019 assessing $3,938 in administrative penalties with $787 deferred. 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 Nichols Ford, Ltd., Docket No. 2017-0023-AIR-E on February 26, 2019 assessing $1,000 in administrative penalties with $200 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 Stripes LLC dba Stripes 5259, Docket No. 2017-0381-PST-E on February 26, 2019 assessing $7,500 in administrative penalties with $1,500 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 City of Dilley, Docket No. 2017-0628-PWS-E on February 26, 2019 assessing $4,168 in administrative penalties with $833 deferred. 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 Greg LeBlanc dba Orange County Ice and Fredna LeBlanc dba Orange County Ice, Docket No. 2017-1318-PWS-E on February 26, 2019 assessing $1,109 in administrative penalties with $221 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 Victoria County Water Control and Improvement District No. 2, Docket No. 2017-1457-MWD-E on February 26, 2019 assessing $7,188 in administrative penalties with $1,437 deferred. 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 SAHAR BUSINESS INC dba Quick Stop, Docket No. 2017-1512-PST-E on February 26, 2019 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, 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 & V KIT SERVICES, INC. dba J & V Chevron, Docket No. 2017-1604-PST-E on February 26, 2019 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, 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 Gulf Coast Authority, Docket No. 2017-1626-AIR-E on February 26, 2019 assessing $4,950 in administrative penalties with $990 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 Ramadan Mohamad dba Speedy Bee 1, Docket No. 2017-1742-PST-E on February 26, 2019 assessing $7,313 in administrative penalties with $1,462 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, 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 Haitham Laila dba Stop and Go, Docket No. 2018-0046-PST-E on February 26, 2019 assessing $7,492 in administrative penalties with $1,498 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 Roundup Partners, L.P. dba Star Stop, Docket No. 2018-0067-PST-E on February 26, 2019 assessing $4,624 in administrative penalties with $924 deferred. 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 D-BAR-B WATER-WASTEWATER SUPPLY CORPORATION, Docket No. 2018-0079-PWS-E on February 26, 2019 assessing $1,863 in administrative penalties with $372 deferred. 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 SUNNY'S LONG POINT, INC. dba Sunny Citgo, Docket No. 2018-0115-PST-E on February 26, 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 4S FARMING OPERATIONS, LLC, Docket No. 2018-0127-IHW-E on February 26, 2019 assessing $2,624 in administrative penalties with $524 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 SA Food Mart Inc, Docket No. 2018-0261-PST-E on February 26, 2019 assessing $3,575 in administrative penalties with $715 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, 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. 2018-0350-PWS-E on February 26, 2019 assessing $100 in administrative penalties with $20 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 Oldham-Cummings Post No. 6441, Veterans of Foreign Wars of the United States, Docket No. 2018-0353-PWS-E on February 26, 2019 assessing $100 in administrative penalties with $20 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin,

An agreed order was adopted regarding Mark Veach dba Wholesale Landscape Supply, Docket No. 2018-0362-MSW-E on February 26, 2019 assessing $3,750 in administrative penalties with $750 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 Carlos Rodriguez, Docket No. 2018-0363-WQ-E on February 26, 2019 assessing $1,250 in administrative penalties with $250 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 City of Texarkana, Docket No. 2018-0392-PWS-E on February 26, 2019 assessing $2,950 in administrative penalties with $590 deferred. Information concerning any aspect of this order 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 TEXAS BOYS RANCH, INCORPORATED, Docket No. 2018-0407-PWS-E on February 26, 2019 assessing $480 in administrative penalties with $96 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 Hikaru Sakura Inc dba Timeout C-Store and Eagle C - Stores, Inc. dba Timeout C-Store, Docket No. 2018-0433-PST-E on February 26, 2019 assessing $3,375 in administrative penalties with $675 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 San Patricio County Municipal Utility District No. 1, Docket No. 2018-0436-PWS-E on February 26, 2019 assessing $565 in administrative penalties with $113 deferred. Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Spirit 4U LLC dba Jacobs Spirit, Docket No. 2018-0449-PST-E on February 26, 2019 assessing $2,663 in administrative penalties with $532 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 Amy R. Simpson and Noel A. Simpson, Docket No. 2018-0511-OSS-E on February 26, 2019 assessing $450 in administrative penalties with $90 deferred. 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 City of Bevil Oaks, Docket No. 2018-0568-PWS-E on February 26, 2019 assessing $240 in administrative penalties with $48 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 City of Sansom Park, Docket No. 2018-0599-WQ-E on February 26, 2019 assessing $3,375 in administrative penalties with $675 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 Texas State Technical College, Docket No. 2018-0643-MLM-E on February 26, 2019 assessing $286 in administrative penalties with $57 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 Solvay Specialty Polymers USA, L.L.C., Docket No. 2018-0655-AIR-E on February 26, 2019 assessing $1,438 in administrative penalties with $287 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 AB Mini Mart, Inc. dba AB Food & Gas, Docket No. 2018-0661-PST-E on February 26, 2019 assessing $2,937 in administrative penalties with $587 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BLUEBONNET YOUTH RANCH, Docket No. 2018-0700-PWS-E on February 26, 2019 assessing $1,130 in administrative penalties with $226 deferred. 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 SHIN-ETSU SILICONES OF AMERICA, INC., Docket No. 2018-0722-PWS-E on February 26, 2019 assessing $355 in administrative penalties with $71 deferred. 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 Triple R Assets, LLC, Docket No. 2018-0736-PWS-E on February 26, 2019 assessing $754 in administrative penalties with $150 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 Golden SA Properties, LLC, Docket No. 2018-0774-MLM-E on February 26, 2019 assessing $2,460 in administrative penalties with $492 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Paint Rock, Docket No. 2018-0836-PWS-E on February 26, 2019 assessing $292 in administrative penalties with $58 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 Nerro Supply, LLC dba Apache Hills, Docket No. 2018-0858-PWS-E on February 26, 2019 assessing $300 in administrative penalties with $60 deferred. 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 City of Rotan, Docket No. 2018-0945-PWS-E on February 26, 2019 assessing $1,105 in administrative penalties with $221 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 Bestway Oilfield, Inc., Docket No. 2018-1074-AIR-E on February 26, 2019 assessing $1,312 in administrative penalties with $262 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.

A field citation was adopted regarding Shedric J. Walker, Docket No. 2018-1350-WOC-E on February 26, 2019 assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding 3P Stone, Docket No. 2018-1457-WQ-E on February 26, 2019 assessing $875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201900693
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 27, 2019

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Enforcement Orders

A default order was adopted regarding ELM RIDGE WATER COMPANY, INC., Docket No. 2015-0481-MLM-E on February 27, 2019 assessing $15,759 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 order was adopted regarding RA-TE, INC., Docket No. 2015-1823-MWD-E on February 27, 2019 assessing $6,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Craig Rossell dba Lemley RV Park and Marsha Rossell dba Lemley RV Park, Docket No. 2016-0779-PWS-E on February 27, 2019 assessing $2,376 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Caroline Lyn Foley, Docket No. 2016-0807-EAQ-E on February 27, 2019 assessing $32,500 in administrative penalties with $28,900 deferred. Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Country Stop, LLC, Docket No. 2016-1376-PST-E on February 27, 2019 assessing $6,637 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, 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 Oxy Vinyls, LP, Docket No. 2017-0313-AIR-E on February 27, 2019 assessing $8,288 in administrative penalties with $1,657 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 PRAIRIE GROVE WATER SUPPLY CORPORATION, Docket No. 2017-1167-PWS-E on February 27, 2019 assessing $2,205 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rohm and Haas Chemicals LLC, Docket No. 2017-1416-AIR-E on February 27, 2019 assessing $9,300 in administrative penalties with $1,860 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 Antonio Sauceda, Docket No. 2017-1569-MSW-E on February 27, 2019 assessing $15,750 in administrative penalties with $12,150 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 DCP Operating Company, LP, Docket No. 2018-0071-AIR-E on February 27, 2019 assessing $76,472 in administrative penalties. 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 ACME BRICK COMPANY, Docket No. 2018-0174-AIR-E on February 27, 2019 assessing $15,000 in administrative penalties with $3,000 deferred. Information concerning any aspect of this order may be obtained by contacting Robyn Babyak, 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 Sachse, Docket No. 2018-0178-WQ-E on February 27, 2019 assessing $4,875 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 BW Gas & Convenience Retail, LLC dba Yesway 1066, Yesway 1067, Yesway 1059 and Yesway 1051, Docket No. 2018-0231-PST-E on February 27, 2019 assessing $36,778 in administrative penalties with $7,355 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 TPC Group LLC, Docket No. 2018-0235-AIR-E on February 27, 2019 assessing $13,688 in administrative penalties with $2,737 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 Hana Travel Plaza Winfield, Inc., Docket No. 2018-0239-PST-E on February 27, 2019 assessing $7,903 in administrative penalties with $1,580 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Clarksville, Docket No. 2018-0351-PWS-E on February 27, 2019 assessing $387 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 Scott W. Gray dba Iwanda Mobile Home Park, Docket No. 2018-0352-PWS-E on February 27, 2019 assessing $627 in administrative penalties. 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.

A default order was adopted regarding TEX-Q EXPRESS INC, Docket No. 2018-0361-MSW-E on February 27, 2019 assessing $3,937 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, 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 Premium Waters, Inc., Docket No. 2018-0378-IWD-E on February 27, 2019 assessing $7,750 in administrative penalties with $1,550 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, 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 STAFF WATER SUPPLY CORPORATION, Docket No. 2018-0553-PWS-E on February 27, 2019 assessing $486 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Logan Harrell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201900700
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 27, 2019

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders (AOs) entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 8, 2019.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 8, 2019.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Buddy R. Collins and Sherrie R. Collins; DOCKET NUMBER: 2018-0427-MLM-E; TCEQ ID NUMBER: RN109758367; LOCATION: 404 Adkins Drive near Hemphill, Sabine County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; and Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the state of Texas; PENALTY: $3,790; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Eagle Mountain Real Estate Investments, Inc.; DOCKET NUMBER: 2017-0431-PWS-E; TCEQ ID NUMBER: RN109422428; LOCATION: 12820 Morris Dido Newark Road, Fort Worth, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank at the public water system until the facility is decommissioned; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well for as long as the well remains in service; and 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply to ensure that continuous and effective disinfection can be secured under all conditions for the purpose of microbiological control and distribution protection; PENALTY: $550; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: East Newton Water Supply Corporation; DOCKET NUMBER: 2018-0271-PWS-E; TCEQ ID NUMBER: RN101270130; LOCATION: State Highway 87 North, about 5 miles north of United States Highway 190 near Newton, Newton 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 (ED) in each quarter by the tenth day of the month following the end of the quarter for the second and third quarters of 2017; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill-paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and is consistent with compliance monitoring data for calendar year 2016; 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; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and any associated late fees for TCEQ Financial Administration Account Number 91760004 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 Certificate of Convenience and Necessity Number 11338 for calendar year 2017; PENALTY: $393; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Elsa Pirkle; DOCKET NUMBER: 2017-1679-MSW-E; TCEQ ID NUMBER: RN109290684; LOCATION: 505 West Anderson Road, Donna, Hidalgo County; TYPE OF FACILITY: real property involved in management of municipal solid waste (MSW); RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $11,250; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: RANGER UTILITY COMPANY; DOCKET NUMBER: 2017-1572-PWS-E; TCEQ ID NUMBER: RN101273761; LOCATION: 3601 South Kings Highway near Texarkana, Bowie County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f) and TCEQ AO Docket Number 2014-1841-PWS-E, Ordering Provision Number 2.a.iii., by failing to provide and submit a copy of the public notification to the executive director (ED) regarding the failure to conduct routine distribution coliform monitoring; 30 TAC §290.122(c)(2)(A) and (f) and TCEQ AO Docket Number 2014-1841-PWS-E, Ordering Provision Number 2.a.iii., by failing to provide and submit a copy of the public notification to the ED regarding the failure to collect raw groundwater *Escherichia Coli* samples following a total coliform-positive result; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide and submit a copy of public notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Operating Report by the tenth day of the month following the end of each quarter; 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; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; and 30 TAC §290.117(c)(2)(B), (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; PENALTY: $1,402; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201900674
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 26, 2019

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Notice of Public Meeting for Municipal Solid Waste Permit Amendment Proposed Permit No. 1599B

APPLICATION. Greenhouse Road Landfill, LP, P.O. Box 218363, Houston, Texas 77218-8363, a waste management company, has applied to the Texas Commission on Environmental Quality (TCEQ) for a *permit amendment* to authorize the expansion of the Greenhouse Road Landfill. The facility is *located* at 3510 Greenhouse Road, Houston, Texas in Harris County, Texas. The TCEQ received this application on November 10, 2016. 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: https://www.mapquest.com/us/texas/greenhouse- road-landfill-365543480. For exact location, refer to application.

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. Response will be provided orally during the Informal Discussion Period. During the Formal Discussion Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all formal 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:

Thursday, March 28, 2019, at 7:00 p.m.

Houston Marriott Energy Corridor

16011 Katy Freeway

Houston, Texas 77094

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/.* Please note that the end of the public comment period is at the close of the public meeting. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Harris County Public Library, Katherine Tyra Branch at Bear Creek, 16719 Clay Road, Houston, Texas 77084. The permit application may be viewed online at *http://www.biggsandmathews.com/permits.php.* Further information may also be obtained from Greenhouse Road Landfill, LP at the address stated above or by calling Greg Weiss at (281) 492-2558, ext. 21.

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.

TRD-201900701
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 27, 2019

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Notice of Water Rights Application

Notices issued January 30, 2019, through February 22, 2019

APPLICATION NO. 12-3653B; Larry Wayne Adams, P.O. Box 172, Gustine, Texas 76455, Applicant, seeks to amend Certificate of Adjudication No. 12-3653 to maintain three existing dams and reservoirs on the Leon River, Brazos River Basin, and impound therein not to exceed a total impoundment of 2.24 (1.24, 0.29, and 0.71) acre-feet of water for agricultural purpose in Comanche County. The application and partial fees were received on April 17, 2014. Additional information and fees were received on November 12 and November 14, 2014 and April 12, and August 31, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on December 6, 2016. The TCEQ Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to maintaining the reservoirs with alternate sources of water. The application and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below within 30 days of the newspaper publication of the notice.

APPLICATION NO. 13117; Williamson County Municipal Utility District 15, 100 Congress Avenue, Suite 1300, Austin, Texas 78701, Applicant, has applied for a Water Use Permit to authorize the maintenance of two reservoirs on an unnamed tributary of Smith Branch and McNutt Creek, Brazos River Basin for recreational purposes in Williamson County. Applicant indicates the reservoirs will be maintained full with purchased water from the City of Georgetown or groundwater. The application was received on March 31, 2014. Additional information and fees were received on April 14, 2014, November 6, 2014, October 13, 2016, April 19, 2017, January 5, January 9, January 17, and January 22, 2018. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on March 9, 2018. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, requiring the maintenance of the alternate source of water. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 08-2348A; The City of Denton, 901-A Texas Street, Denton, Texas 76209, Applicant, seeks to amend Certificate of Adjudication No. 08-2348 to authorize the use of bed and banks of Clear Creek, Pecan Creek, Elm Fork Trinity River and Lewisville Reservoir to convey its surface-water based return flows for subsequent diversion and use for municipal and domestic purposes in Denton County, Trinity River Basin. The application and partial fees were received on March 5, 2010. Additional information and fees were received on March 29, June 7, June 9, June 22, August 2, October 11, October 19, November 29, 2010, May 11 and May 16, 2011. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on May 27, 2011. Additional information was received on April 11, April 12, 2016, May 11, 2017, February 26 and April 18, 2018. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions, including, but not limited to, maintenance of an accounting plan. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief

Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by March 28, 2019.

APPLICATION NO. 3985C; The City of Lubbock, P.O. Box 2000, Lubbock, Texas 79457, Applicant, seeks to amend Water Use Permit No. 3985 to authorize the use of the bed and banks of Yellow House Draw and the North Fork Double Mountain Fork Brazos River, Brazos River Basin to convey groundwater and surface water-based return flows and other water for subsequent diversion and use for municipal, industrial, agricultural and recreational purposes in Lubbock and Lynn Counties. The application and partial fees were received on March 3, 2016. Additional information and fees were received on March 17, October 7 and October 10, 2016. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on November 9, 2016. Additional information was received on July 2, 2018. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions, including, but not limited to, maintenance of an accounting plan. The application, technical memoranda, and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by March 25, 2019.

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at 512-239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement (I/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201900694

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 27, 2019

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Request for Preliminary Comments for Review and Revision of the Texas Surface Water Quality Standards and the Procedures to Implement the Texas Surface Water Quality Standards

The Texas Commission on Environmental Quality (TCEQ) is requesting preliminary written comments on the Texas Surface Water Quality Standards (30 Texas Administrative Code Chapter 307) (Standards) and the Procedures to Implement the Texas Surface Water Quality Standards, TCEQ RG-194 (Revised), June 2010 (IPs). This request for written comments is in preparation of review and revision as needed of the Standards and IPs.

The Standards establish instream water quality requirements for Texas streams, rivers, lakes, estuaries, and other water bodies. The TCEQ is directed to establish water quality standards in the Texas Water Code, §26.023. The federal Clean Water Act, §303(c), requires that states publicly review and revise their water quality standards as needed every three years. Revisions are made to: (1) incorporate new information on potential pollutants, (2) include additional data about water quality conditions in specific water bodies, (3) address new state and federal regulatory requirements, and (4) accommodate public concerns and public goals for water quality in the state.

The IPs provide guidance and explanation of the general and technical procedures used in implementing the standards in wastewater discharge permits. Review and revision of these implementation procedures will be conducted concurrently with the review and revision of the Standards.

The TCEQ will review and consider preliminary comments during the development of draft proposals for revisions of the Standards and IPs. Written responses to these preliminary comments will not be provided. Any proposed revisions whether resulting from these comments or not will be subject to a formal public hearing and a public comment period prior to adoption.

Written comments on the Standards may be submitted to Ms. Debbie Miller, MC-234, Water Quality Planning Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4410. Electronic comments may be submitted via email to standards@tceq.texas.gov. File size restrictions may apply to comments being submitted via e-mail. All comments should reference the Texas Surface Water Quality Standards.

Written comments on the IPs may be submitted to Mr. Peter Schaefer, MC-150, Water Quality Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4420. Electronic comments may be submitted via email to ipcommnt@tceq.texas.gov. File size restrictions may apply to comments being submitted via e-mail. All comments should reference the Implementation Procedures.

The preliminary comment period closes at 5:00 p.m. on April 8, 2019.

A copy of the 2018 version of the Standards is available on the commission's website at: https://www.tceq.texas.gov/assets/public/legal/rules/rules/pdflib/307.pdf.

A copy of the 2010 version of the IPs is available on the commission's website at: https://www.tceq.texas.gov/assets/public/permitting/waterquality/standards/docs/june_2010_ip.pdf.

For further information on the Standards, please contact Ms. Debbie Miller, Water Quality Planning Division, at (512) 239-1703 or via email to standards@tceq.texas.gov.

For further information on the IPs, please contact Mr. Peter Schaefer, Water Quality Division, at (512) 239-4372 or via email to ipcommnt@tceq.texas.gov.

TRD-201900673
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 26, 2019

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 19, 2019, to February 22, 2019. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, March 1, 2019. The public comment period for this project will close at 5:00 p.m. on Sunday, March 31, 2019.

FEDERAL AGENCY ACTIONS:

Applicant: Entergy Texas, Inc.

Location: The project site is located in wetlands adjacent to Taylor Bayou approximately .59 mile from the intersection of State Highways 73 and 82, west of Port Arthur, Jefferson County, Texas.

Latitude & Longitude (NAD 83): 29.87566 -93.99524

Project Description: The applicant proposes to permanently discharge approximately 24,512 cubic yards of dredged or fill material into 3.521 acres of palustrine emergent (PEM) wetlands for the purpose of constructing an electrical substation and two 400 foot access roads approximately 30 feet wide. Approximately 6.952 acres of PEM wetlands may be temporarily impacted by construction activities.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2018-00077. This application will be reviewed pursuant to Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1161-F1

Applicant: Entergy Texas, Inc.

Location: The project site is located in wetlands adjacent to the Neches River, located approximately 0.9-mile east-southeast of the intersection of United States Highway 69 and Farm-to-Market Road 3514, west of Nederland, in Jefferson County, Texas.

Latitude & Longitude (NAD 83): 29.99020, -94.02111

Project Description: The applicant proposes to permanently discharge approximately 53, 631 cubic yards of fill material into 5.864 acres of palustrine scrub shrub (PSS) wetlands, and 0.496-acre of palustrine emergent (PEM) wetlands. The project proposes to temporarily discharge fill material into 9.894 acres of PEM wetlands but will be restored to preconstruction contours and allowed to re-vegetate after construction is complete. This project will permanently convert 5.799 acres of PSS wetlands to PEM wetlands within a 50-foot perimeter of the substation and within a 225-foot right-of-way (ROW) for power pole placement. These impacts are proposed for the construction of a 4.0-acre electrical substation, a 1,600-linear-foot-long, 225-linear-foot-wide ROW for two overhead transmission lines, and a 1.1-mile-long, 20- to 25-foot-wide access road.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2017-00321. This application will be reviewed pursuant to Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1183-F1

Applicant: The San Jacinto River Fleet, LLC

Location: The project site is located in the San Jacinto River, adjacent to 18001 East Freeway, in Channelview, Harris County, Texas 77530.

Latitude & Longitude (NAD 83): 29.795364, -95.068072

Project Description: The applicant proposes to permanently retain, repair/replace, and perform maintenance on existing structures, identified as spud barges on Page 2 of the project plans, existing bulkheads, and existing pilings in the San Jacinto River. These existing structures will facilitate the fleeting of barges. This fleeting area is being proposed by the applicant as a "Barge fleeting area for Dangerous Liquid Barges", as regulated under 46 CFR 151, and 49 CFR 172.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2010-00364. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

CMP Project No: 19-1158-F1

Applicant: Jefferson County Drainage District No. 6

Location: The project is composed of 4 separate canals along the GIWW, in Jefferson and Chambers County, Texas.

Latitude & Longitude (NAD 83):

Outfall Structure 1 Start: 29.608821, -94.366404

Outfall Structure 1 End: 29.605657, -94.365936

Outfall Structure 2 Start: 29.627558, -94.324769

Outfall Structure 2 End: 29.625132, -94.324847

Outfall Structure 3 Start: 29.640178, -94.307144

Outfall Structure 3 End: 29.634215, -94.305344

Outfall Structure 4 Start: 29.649240, -94.282795

Outfall Structure 4 End: 29.644453, -94.281768

Project Description: The applicant proposes to modify the previously authorized permit by: Moving the outfall structures to within 50 feet of the GIWW in each outfall canal; Placement of articulated concrete mat on both sides of each new outfall structure; Construct rock breakwaters on both sides of each outfall canal along the GIWW for approximately 700 feet, placed 20-25 feet waterward from the existing bank instead

of the originally authorized rip rap; Net gain of coastal marsh habitat remains unchanged.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2008-00352. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

CMP Project No: 19-1072-F1

Applicant: City of Rockport

Location: The project is located in Aransas Bay at the Key Allegro Yacht Club off Bay Shore Drive in Rockport, Aransas County, Texas.

Latitude & Longitude (NAD 83): 28.049424, -97.029985

Project Description: The applicant proposes to place approximately 153 cubic yards of rock material below the mean high-water line within a 0.1-acre footprint for the construction of a rock groin located at the Bay Shore Drive Reach 1 Groin for rehabilitation. Rehabilitation will require demolition of the existing vertical concrete and wood groins and replacement with a rock groin.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2019-00066. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

CMP Project No: 19-1213-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Allison Buchtien P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201900699
Mark A. Havens
Chief Clerk and Deputy Land Commissioner
General Land Office
Filed: February 27, 2019

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Texas Department of Housing and Community Affairs

2019-2 Multifamily Special Purpose Notice of Funding Availability: Predevelopment

I. Source of Multifamily Predevelopment Funds.

Multifamily Predevelopment funds are made available through program income generated by loan repayments from the Tax Credit Assistance Program (TCAP Repayment funds or TCAP RF). The Department may amend this NOFA or the Department may release a new NOFA upon receiving additional TCAP loan repayments. These funds have been programmed for multifamily activities including the predevelopment of affordable housing involving new construction or rehabilitation.

II. Special Purpose Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the Department) announces the availability of up to $200,000 in Multifamily TCAP RF funding for eligible predevelopment activities for Applicants to finance affordable multifamily rental housing for low-income Texans through the Department.

The Multifamily Predevelopment fund provides grants to nonprofit entities, including any staff or Board members of the organization, Affiliate entity, or any individual with control of the proposed Development, that have not received an award of funds from the Department for a multifamily development after January 1, 2009. Eligible applicants may apply for one predevelopment grant up to $50,000 to finance the predevelopment of affordable housing for low-income Texans qualified as earning 80 percent or less of the applicable Area Median Family Income.

Starting on March 11, 2019, the Department will accept applications on a first-come, first-served basis. All funds will be available on a statewide basis until November 29, 2019. Applications with a development site in a county declared by the Federal Emergency Management Agency to be eligible for Individual Assistance (IA) in 2017, 2018, or 2019 will take priority over applications with development sites in non-IA counties between March 11, 2019, and April 30, 2019. Such Applications will be considered to have a received by date of March 11, 2019. Secondary to the Disaster Recovery Priority, eligible Applications meeting the requirements of the definition of Community Housing Development Organization (CHDO) found in 10 TAC §13.2(4) and the requirements of this NOFA, will be prioritized before Applications that cannot be certified as CHDOs. An Application submitted between March 11, 2019, and April 30, 2019, that qualifies for CHDO Priority but does not also qualify for Disaster Recovery Priority will have a date of receipt of March 12, 2019. Applications submitted between March 11, 2019, and April 30, 2019, that do not qualify under either priority will be prioritized based on date received, with the earliest date of receipt being March 13, 2019. Applications with the same date of receipt within the same Priority will be ranked based on the greatest linear distance from the nearest Housing Tax Credit assisted Development awarded less than 15 years ago, according to the Department's property inventory tab of the Site Demographic Characteristics Report.

III. Application Deadline and Availability.

Based on the availability of funds, Applications may be accepted until 5:00 p.m., Austin local time, November 26, 2019. The "2019-2 Multifamily Special Purpose NOFA: Predevelopment" is posted on the Department's website: http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm. Subscribers to the Department's LISTSERV will receive notification that the NOFA is posted. Subscription to the Department's LISTSERV is available here: http://maillist.tdhca.state.tx.us/list/subscribe.html?lui=f9mu0g2g&mContainer=2&mOwner=G382s2w2r2p.

Questions regarding the 2019-2 Multifamily Special Purpose NOFA: Predevelopment may be addressed to Andrew Sinnott at (512) 475-0538 or andrew.sinnott@tdhca.state.tx.us.

TRD-201900650
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Filed: February 25, 2019

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Notice of Funding Availability

The Texas Department of Housing and Community Affairs (Department) is making available 2019 HOME Investment Partnerships Program (HOME) funding for single family activities for Single Family Development (SFD).

Funds will be available through the 2019 HOME Single Family Programs SFD Set-Aside Notice of Funding Availability (NOFA). The NOFA is for approximately $4,000,000 in project funds and $200,000 in CHDO Operating Expense funds. Applications will be awarded on a first-come first-served basis.

The availability and use of these funds are subject to the Department's Administrative Rule at 10 TAC Chapter 1, Enforcement Rule; at 10 TAC Chapter 2, Single Family Umbrella Rules; at 10 TAC Chapter 20, the Minimum Energy Efficiency Requirements for Single Family Construction Activities; at 10 TAC Chapter 21, the Department's HOME Program Rule; at 10 TAC Chapter 23; and the federal regulation governing the HOME Program at 24 CFR Part 92.

The NOFA is available on the Department's website at *http://www.tdhca.state.tx.us/nofa.htm.*

All Application materials including an Application Submission Procedures Manual and the Application will be made available on the Department's website at *http://www.tdhca.state.tx.us/home-division/applications.htm no later than April 1, 2019.*

Applications will be accepted on a first-come, first-served basis beginning Monday, May 13, 2019, 8:00 a.m., Austin local time, until Friday, July 12, 2019, 5:00 p.m., Austin local time as further described in the NOFA.

TRD-201900639
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Filed: February 25, 2019

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Notice of Public Comment Period and Public Hearing on the Draft 2019 Department of Energy Weatherization Assistance Program State Plan

The Texas Department of Housing and Community Affairs (TDHCA) will hold a 22-day public comment period from Friday, March 8, 2019, through Friday, March 29, 2019, at 5:00 p.m., Austin local time, to obtain public comment on the Draft 2019 Department of Energy (DOE) State Plan.

The DOE WAP State Plan offers weatherization assistance for low income persons. Funding provides for the installation of weatherization measures to increase energy efficiency of a home including caulking; weather stripping; adding ceiling, wall, and floor insulation; patching holes in the building envelope; duct work; and repair or replacement of energy inefficient heating and cooling systems. Additionally, the funds allow subgrantees to complete financial audits, household energy audits, outreach and engagement activities, and program administration. Also, the funding provides for state administration and state training and technical assistance activities. During the public comment period, a public hearing will take place as follows:

Wednesday, March 20, 2019

5:00 p.m., Austin local time

Thomas Jefferson Rusk Building, #320

208 East 10th Street

Austin, Texas 78701

Anyone may submit comments on the Draft 2019 DOE WAP State Plan in written form or oral testimony at the public hearing. Written comments during the public comment period may be submitted to TDHCA, Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941, or by email to the following address: gavin.reid@tdhca.state.tx.us.

The full text of the 2019 Draft DOE State Plan may be viewed at the Department's website: http://www.tdhca.state.tx.us/public-comment.htm. The public may also receive a copy of the 2019 Draft DOE State Plan by contacting Gavin Reid at gavin.reid@tdhca.state.tx.us or by phone at (512) 936-7828.

Individuals who require auxiliary aids or services for the public hearing should contact Jason Gagne at (512) 475-0166 or Relay Texas at (800) 735-2989 at least three days before the hearings so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearings should contact Elena Peinado by phone at (512) 475-3814 or by email at elena.peinado@tdhca.state.tx.us at least three days before the hearings so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviarle un correo electrónico a elena.peinado@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201900649
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Filed: February 25, 2019

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for American Mining Insurance Company, a foreign fire and/or casualty company, to change its name to Berkley Casualty Company. The home office is in Urbandale, Iowa.

Application for Atlanta International Insurance Company, a foreign fire and/or casualty company, to change its name to Wellfleet New York Insurance Company. The home office is in Flushing, New York.

Application for Majestic Insurance Company, a foreign fire and/or casualty company, to change its name to Aspire General Insurance Company. The home office is in Rancho Cucamonga, California.

Application to do business in the state of Texas for United Security Health and Casualty Insurance Company, a foreign fire and/or casualty company. The home office is in Bedford Park, Illinois.

Application for incorporation in the state of Texas for Texas Independence Health Plan, Inc., a domestic Health Maintenance Organization. The home office is in Victoria, 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 Elijio Salas, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201900698
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: February 27, 2019

♦ ♦ ♦

Texas Department of Licensing and Regulation

Notice of Vacancies on Air Conditioning and Refrigeration Contractors Advisory Board

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Air Conditioning and Refrigeration Contractors Advisory Board (Board) established by Texas Occupations Code, Chapter 1302. The purpose of the Board is to advise the Texas

Commission of Licensing and Regulation (Commission) in adopting rules, administering and enforcing the Occupations Code covering Air Conditioning and Refrigeration, and setting fees. Service as a Board member is voluntary, and compensation is not authorized by law. This announcement is for:

(1) one member who holds a license of any classification under this chapter and is principally engaged in air conditioning and refrigeration contracting, and practices in a municipality *and*

(2) one member who holds a Class A license and practices in a municipality with a population of more than 250,000, who employs organized labor.

The Board consists of nine members appointed by the presiding officer of the Commission, with the approval of the Commission. At least one appointed Board member must be an air conditioning and refrigeration contractor who employs organized labor. The executive director of the Department and the chief administrator of Texas Occupations Code, Chapter 1302 serve as ex officio, nonvoting members of the Board. Members serve staggered six-year terms with the terms of two appointed members expiring on February 1 of each odd-numbered year. The Board is composed of the following members:

one official of a municipality with a population of more than 250,000;

one official of a municipality with a population of not more than 250,000;

five full-time licensed air conditioning and refrigeration contractors: one member who holds a Class A license and practices in a municipality with a population of more than 250,000; one member who holds a Class B license and practices in a municipality with a population of more than 250,000; one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000; one member who holds a Class B license and practices in a municipality with a population of not more than 25,000; and one member who holds a license of any classification under this chapter, is principally engaged in air conditioning and refrigeration contracting, and practices in a municipality;

one member must be a building contractor who is principally engaged in home construction and is a member of a statewide building trade association; and

one member of the public.

Interested persons should submit an application on the Department website at: *https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx*. Applicants can also request an application from the Department by telephone (800) 803-9202 or by e-mail at*advisory.boards@tdlr.texas.gov.* **This is not a paid position and there is no compensation or reimbursement for serving on the Board.**

TRD-201900681
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: February 26, 2019

♦ ♦ ♦

Notice of Vacancy on Behavior Analyst Advisory Board

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Behavior Analyst Advisory Board (Board) established by Texas Occupations Code, Chapter 506. The Behavior Analyst Advisory Board advises the Texas Commission of Licensing and Regulation (Commission) in adopting rules, administering and enforcing the Occupations Code covering Behavior Analysts, and setting fees. The Board meets at the call of the presiding officer of the Commission or the executive director of the Department. Service as a Board member is voluntary, and compensation is not authorized by law. This announcement is for: **one member who is a parent or guardian of a current or former recipient of applied behavior analysis services to serve on the Behavior Analyst Advisory Board.**

The Board consists of nine members appointed by the presiding officer or the Commission, with the approval of the Commission. Members serve staggered six-year terms with the terms of three members expiring on February 1 of each odd-numbered year. A member may not serve more than two consecutive six-year terms. The Board is composed of the following members:

(1) four licensed behavior analysts, at least one of whom must be certified as a Board Certified Behavior Analyst--Doctoral or hold an equivalent certification issued by the certifying entity;

(2) one licensed assistant behavior analyst;

(3) one physician who has experience providing mental health or behavioral health services; and

(4) three members who represent the public and who are either former recipients of applied behavior analysis services or the parent or guardian of a current or former recipient of applied behavior analysis services.

Interested persons should submit an application on the Department website at: *https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx*. Applicants can also request an application from the Department by telephone (800) 803-9202 or by e-mail *advisory.boards@tdlr.texas.gov.* **This is not a paid position and there is no compensation or reimbursement for serving on the Board.**

TRD-201900676
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: February 26, 2019

♦ ♦ ♦

Notice of Vacancy on Driver Training and Traffic Safety Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Driver Training and Traffic Safety Advisory Committee (Committee) established by Texas Education Code, Chapter 1001. The purpose of the Driver Training and Traffic Safety Advisory Committee is to advise the Texas Commission on Licensing and Regulation (Commission) and the Department on rules and educational and technical matters relevant to the administration of this chapter. The Committee meets at the call of the presiding officer of the Commission. Service as a Committee member is voluntary, and compensation is not authorized by law. This announcement is for: **one member representing a parent-taught course provider.**

The Committee consists of eleven members appointed for staggered six-year terms by the presiding officer of the Commission, with the approval of the Commission. If a license is required to hold any of the member positions on the Committee, the license must be issued by the State of Texas, and be in good standing at appointment and throughout the balance of the term. A member may not serve two consecutive full terms. The Committee is composed of the following members:

(1) one member representing a driver education school that offers a traditional classroom course and in-car training;

(2) one member representing a driver education school that offers a traditional classroom course, alternative methods of instruction, or in-car training;

(3) one member representing a driving safety school offering a traditional classroom course or providing an alternative method of instruction;

(4) one member representing a driving safety course provider approved for a traditional classroom course and for an alternative method of instruction;

(5) one member representing a driving safety course provider approved for a traditional classroom course or for an alternative method of instruction;

(6) one licensed instructor;

(7) one representative of the Department of Public Safety;

(8) one member representing a drug and alcohol driving awareness program course provider;

(9) one member representing a parent-taught course provider; and

(10) two members representing the public.

Interested persons should submit an application on the Department website at: https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail advisory.boards@tdlr.texas.gov. **This is not a paid position and there is no compensation or reimbursement for serving on the committee.**

TRD-201900677
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: February 26, 2019

♦ ♦ ♦

Supreme Court of Texas

In the Supreme Court of Texas

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 19-9016

ORDER AMENDING COMMENT TO THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

ORDERED that:

1. Paragraph 8 of the comment to Rule 1.01, Texas Disciplinary Rules of Professional Conduct, is amended as published in this order.

2. The Clerk is directed to:

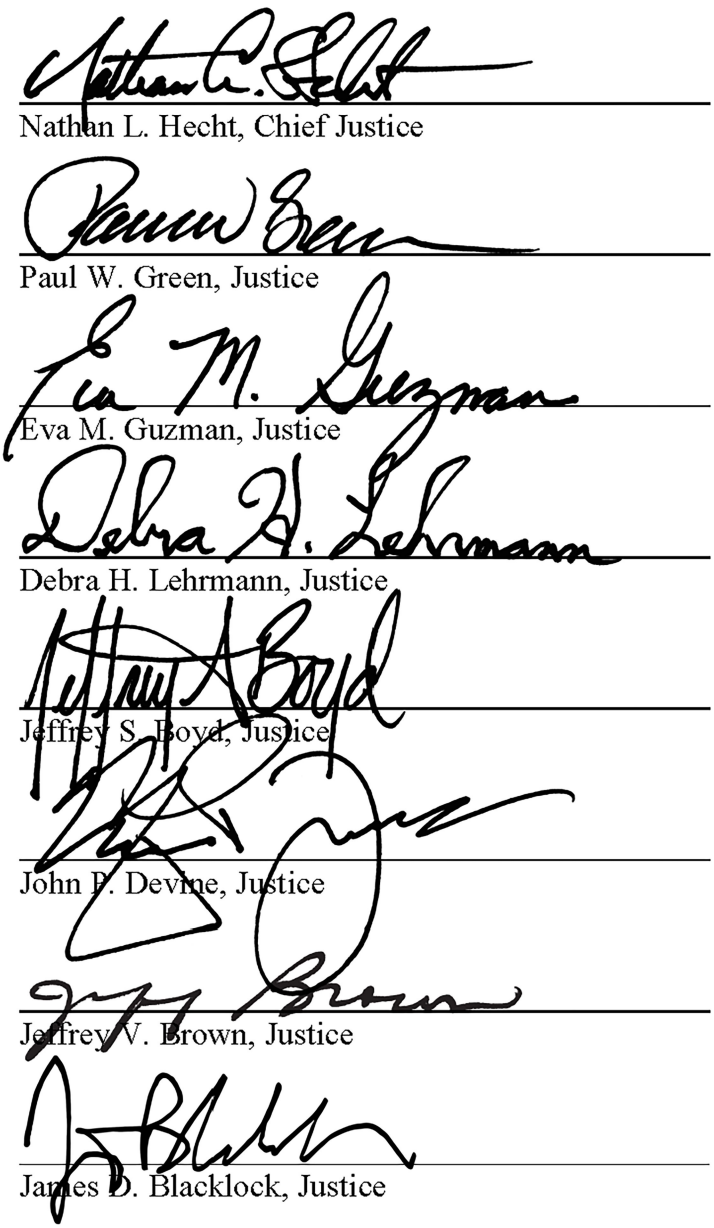
   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

Dated: February 26, 2019.



Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

Jeffrey V. Brown, Justice

James D. Blacklock, Justice

The comment to Rule 1.01, Texas Disciplinary Rules of Professional Conduct, is amended as follows:

Rule 1.01. Competent and Diligent Representation

***

Comment:

***

Maintaining Competence

8. Because of the vital role of lawyers in the legal process, each lawyer should strive to become and remain proficient and competent in the practice of law, including the benefits and risks associated with relevant technology. To maintain the requisite knowledge and skill of a competent practitioner, a lawyer should engage in continuing study and education. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances. Isolated instances of faulty conduct or decision should be identified for purposes of additional study or instruction.

TRD-201900696
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: February 27, 2019

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 19-9017

ORDER REPEALING TEXAS RULE OF CIVIL PROCEDURE 502.2(b) AND JUSTICE COURT CIVIL CASE INFORMATION SHEET

ORDERED that:

1. By orders dated February 12, 2013 (Misc. Docket No. 13-9023) and April 15, 2013 (Misc. Docket No. 13-9049), the Supreme Court of Texas adopted Texas Rule of Civil Procedure 502.2(b), requiring the filing of a justice court civil case information sheet with a petition, and a form for the justice court civil case information sheet.

2. Rule 502.2(b) and the form for the justice court civil case information sheet are repealed, effective immediately.

3. The Clerk is directed to:

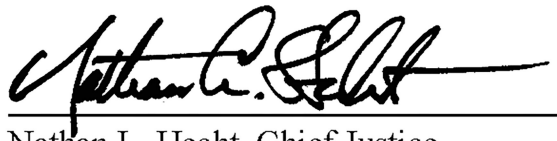
   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

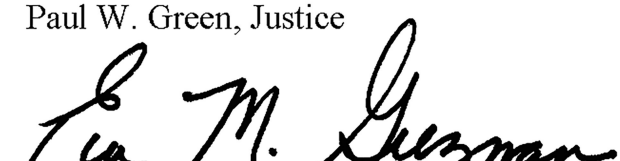
   d. submit a copy of the order for publication in the *Texas Register*.

Dated: February 26, 2019.

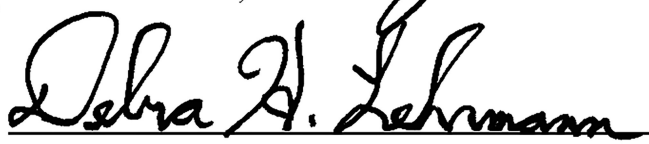


Nathan L. Hecht, Chief Justice

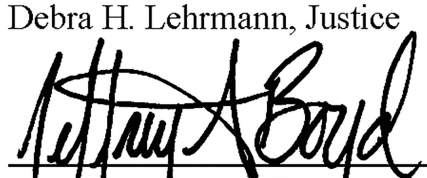
Paul W. Green, Justice



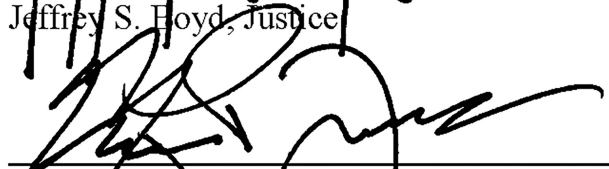
Eva M. Guzman, Justice



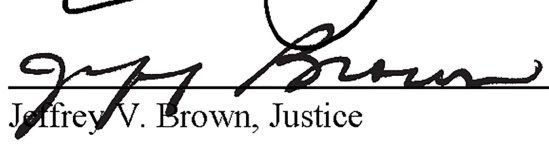
Debra H. Lehrmann, Justice



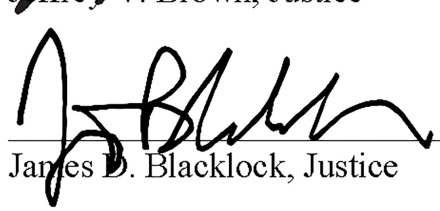
Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice



James D. Blacklock, Justice

TRD-201900697

Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: February 27, 2019

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Texas Department of Transportation

Aviation Division - Requests for Qualifications for Professional Engineering Services

The City of Stanton, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a qualified firm for professional services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Stanton; TxDOT CSJ No.: 1806STNTN.

The TxDOT Project Manager is Ed Mayle.

Scope: Provide engineering and design services, including construction administration, to:

1. Install Medium Intensity Runway Lighting (MIRL);
2. Replace airport beacon and beacon tower;
3. Install lighted windcone and segmented circle;
4. Rehabilitate and mark Runway 16/34;
5. Rehabilitate apron;
6. Rehabilitate taxiway;
7. Rehabilitate eligible areas of hangar access taxilanes; and
8. Install electrical vault and associated equipment.

In accordance with Texas Government Code §2161.252, qualifications that do not contain an up-to-date *"HUB Subcontracting Plan (HSP)"* are non-responsive and will be rejected without further evaluation. In addition, if TxDOT determines that the HSP was not developed in good faith, it will reject the qualifications for failing to comply with material specifications based on the RFQ.

Utilizing multiple engineering, design and construction grants over the course of the next five years, future scope of work items at Stanton Municipal Airport may include construct hangar access taxiway.

The City of Stanton reserves the right to determine which of the services listed above may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services listed above.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at *http://www.txdot.gov/inside-txdot/division/aviation/projects.htm* by selecting "Stanton Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (800) 68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, or submits a cover page with the AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 must be received in the TxDOT Aviation eGrants system no later than April 1, 2019, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at *http://txdot.gov/government/funding/egrants-2016/aviation.html*

An instructional video on how to respond to a solicitation in eGrants is available at *http://txdot.gov/government/funding/egrants-2016/aviation.html*

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at *http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm.*

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or avn-egrantshelp@txdot.gov.

TRD-201900634
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 22, 2019

♦ ♦ ♦

University of Houston System

Request for Proposals: Consulting Services - Evaluation of Safety and Security Systems, RFP #730-19088

The University of Houston System announces a Request for Proposal (RFP) for consultant services pursuant to Government Code, Chapter 2254, Subchapter B.

RFP730-19088 Consulting Services - Evaluation of Safety and Security Systems

Purpose:

The University of Houston System (UHS) is seeking competitive responses to an RFP for a Consultant to provide an independent analysis of its safety and security systems, (security cameras; access control; dispatch system, emergency call boxes and other safety systems as requested) for changes in the form of equipment, software, policies, practices, training, enhancements, and improvements to such systems.

Eligible Applicants:

Consulting firms with related knowledge and experience in:

University/campus safety and security systems.

Services to be performed:

1. A complete strategic plan that includes:

a. Assessment of current University safety (security cameras, access control, dispatch system, emergency call boxes, and other safety systems requested)

b. Recommendations derived from this assessment and key findings

c. Presentation of key findings to steering committee and institutional leadership

d. Timeline and order for completing recommendations

e. Plan for future, on-going assessments of safety systems, including instrument development

Finding by Chief Executive Officer, Renu Khator:

After reviewing the current status and discussing this matter with the staff, the evaluation of the campus safety systems can only be conducted by a firm considered an expert in this field. The University believes that using a third-party consultant, who has conducted similar evaluations for universities comparable in context and size to the University of Houston, will provide the University with best practices that can be used to enhance and improve its safety systems. The expertise needed for this evaluation is complex and requires a comprehensive knowledge of safety systems and how they can be integrated. Currently, the Administration and Finance division does not have the expertise to complete this evaluation. Thus, it is necessary for the University to engage a consultant to advise it regarding its safety systems, and make recommendations, as appropriate for the improvement of equipment, services, and training.

Review and Award Criteria:

All proposals will be evaluated by appointed representatives of the University in accordance with the following procedures:

1. Purchasing will receive and review each RFP proposal to ensure it meets the requirements of the RFP. Qualified proposals will be given to the selection committee.

2. Each member of the selection committee will independently evaluate the qualified proposals according to the criteria in section IX of the RFP, except for price, and send their evaluations to Purchasing. Price will be evaluated by Project Manager.

3. Purchasing will combine the committee's scores to determine which proposal received the highest combined score.

4. Purchasing will notify the respondent with the highest score that the University intends to contract with them.

Deadlines: UH must receive proposals according to instructions in the RFP package on or before Tuesday, April 9, 2019, @ 2:00 p.m. CDT and HUB Subcontracting Plan (HSPs) on or before Wednesday, April 10, 2019, @ 2:00 p.m. CDT.

Obtaining a copy of the RFP: Copies will be available on the Electronic State Business Daily (ESBD) at http://esbd.cpa.state.tx.us/.

The sole point of contact for inquiries concerning RFP is:

Jack Tenner

UH Purchasing

5000 Gulf Freeway, ERP 1, Rm. 204

Houston, Texas 77204-5015

Phone: (713) 743-5671

Email: jdtenner@central.uh.edu

TRD-201900635
Jackie D. Tenner
Director of Purchasing
University of Houston System
Filed: February 22, 2019

♦ ♦ ♦

Workforce Solutions North Texas

Request for Qualifications

Workforce Solutions North Texas has released a Request for Qualifications to solicit quotes for professional services from individuals and/or organizations experienced and qualified to perform an analysis of procurement processes and to provide expert technical assistance and guidance. Selection of professional services shall not be based solely on price. To obtain the RFQ document, contact Mona Statser, Executive Director, at (940) 767-1432 or email *mona.statser@ntxworksolutions.org.*

Deadline to submit responses is 4:00 p.m. on Friday, March 22, 2019.

Workforce Solutions North Texas is an Equal Opportunity Employer/Program and a proud partner of the American Job Center network. Auxiliary aids and services are available upon request to individuals with disabilities. Program operation is dependent upon availability of funds from Texas Workforce Commission.

TRD-201900671
Mona Statser
Executive Director
Workforce Solutions North Texas
Filed: February 25, 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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