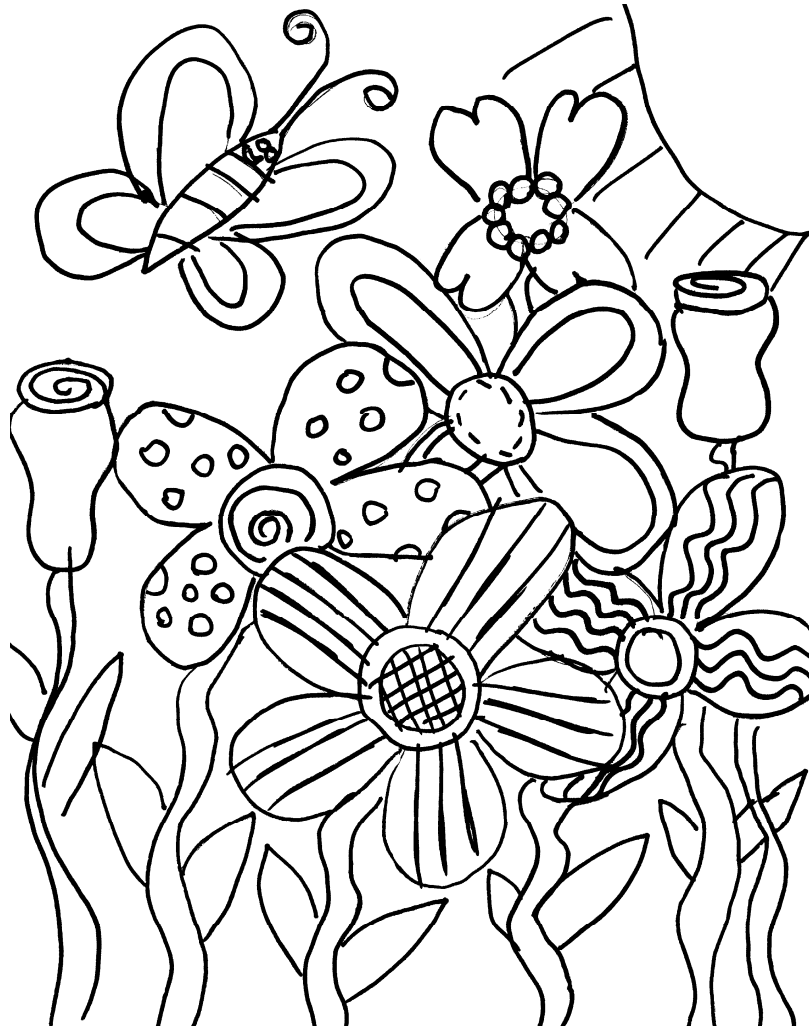

TEXAS REGISTER

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

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THE ATTORNEY GENERAL

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

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

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

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

Requests for Opinions

RQ-0276-KP

Requestor:

The Honorable Todd A. Durden

Kinney County Attorney

Post Office Box 365

Brackettville, Texas 78832-0365

Re: Authority of a clerk to deny a defendant's request to withdraw funds the defendant paid toward fines and court costs prior to a guilty plea or determination of guilt (RQ-0276-KP)

Briefs requested by April 19, 2019

RQ-0277-KP

Requestor:

The Honorable James White

Chair, Committee on Corrections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Protections against excessive fines under the U.S. and Texas Constitutions (RQ-0277-KP)

Briefs requested by April 23, 2019

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

TRD-201900917

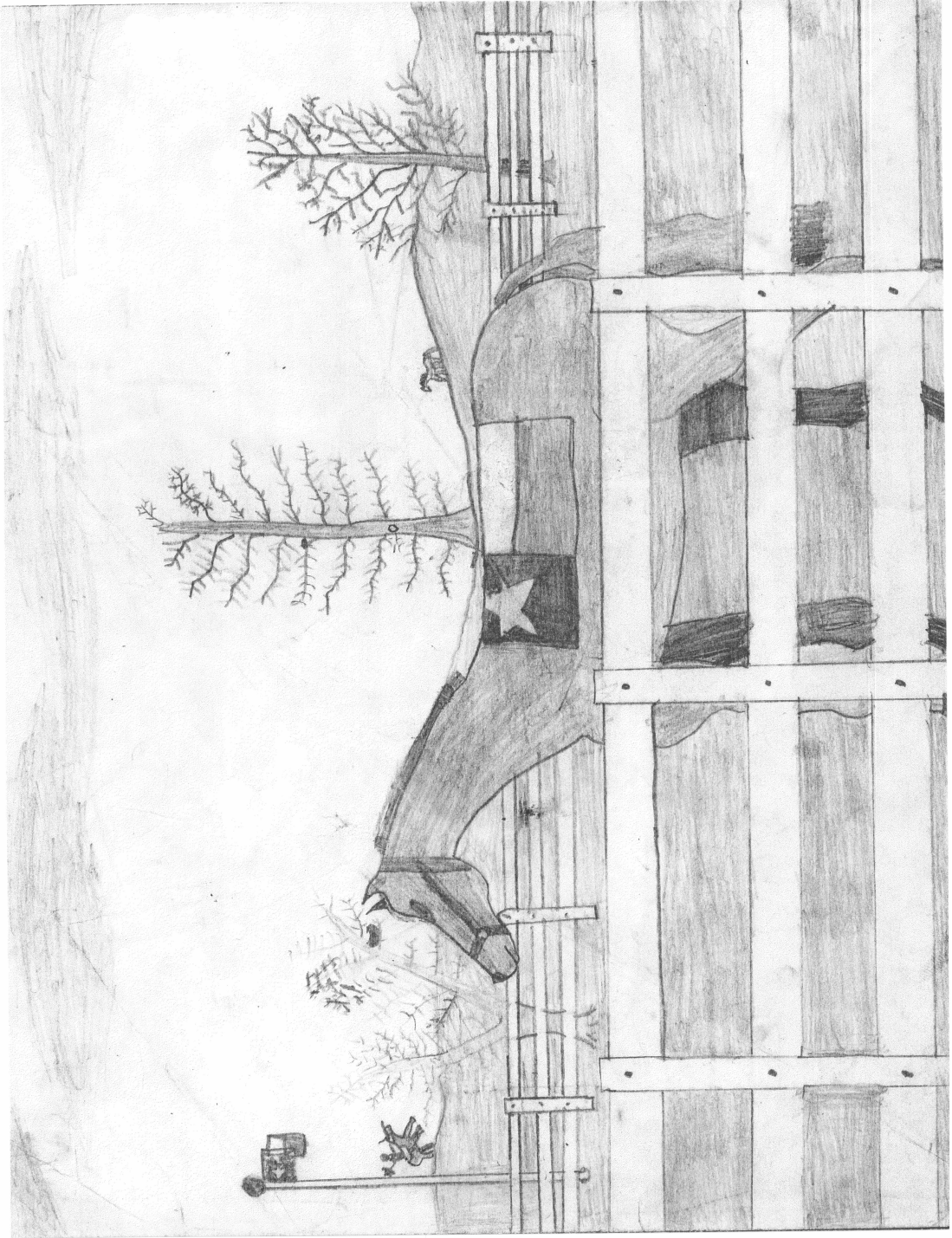
Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: March 26, 2019





PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 2. PROGRAM FOR HORSES

16 TAC §303.93

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §303.93, Quarter Horse Rules. The proposed amendments would eliminate the requirement that a broodmare be permanently domiciled in Texas in order for the foal to qualify to be accredited as a Texas-bred quarter horse. The proposed amendments also include a non-substantive update to this section to update citations to Vernon's Texas Civil Statutes in light of SB 1969 (85th Legislature, Regular Session, 2017), which codified the Texas Racing Act as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit will be the economic benefits of an increase in horses foaled and raised in Texas, as well as accuracy in the statutory citations. There is no probable economic cost to persons required to comply with the amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not adversely affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee

positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the amendments do not require an increase or decrease in fees paid to the agency; the amendments do not create a new regulation; the amendments do not expand or limit existing regulations; the amendments do not repeal existing regulations; the amendments do not increase or decrease the number of individuals subject to the rules' applicability; and the amendments do not significantly positively or negatively affect this state's economy.

EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

IMPACT ON EMPLOYMENT CONDITIONS

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

ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

There will be no adverse effect on rural communities as a result of the proposed amendments. Because the agency has determined that the proposed amendments will have no adverse economic effect on rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

TAKINGS IMPACT STATEMENT

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

EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code §2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e (codified as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019).

§303.93. *Quarter Horse Rules.*

- (a) (No change.)
- (b) Eligibility for Accreditation.

(1) ATB Horses. A horse may be accredited as an ATB horse if the horse was foaled in Texas from an ATB broodmare and is bred to an ATB stallion at least every other breeding [that is permanently domiciled in Texas]. TQHA may require documentation regarding breeding activity to prove eligibility for accreditation.

(2) ATB Broodmares.

(A) A mare may be accredited as an ATB broodmare if the mare [is permanently domiciled in Texas,] is registered with the AQHA or the Jockey Club[;] and is accredited by the TQHA as breeding stock.

(B) An application for accreditation must be on a form prescribed by TQHA and include the applicable one-time payment as prescribed by TQHA. The deadline for filing an application for accreditation is June 30 of the year in which an ATB eligible foal is conceived. TQHA may accredit a broodmare for which the application for accreditation is filed after June 30 but no later than December 31 of the year in which an ATB eligible foal is conceived, provided the application includes payment of a late fee as established by TQHA. An application for accreditation is considered timely filed if it is placed in U.S. mail and is postmarked on or before the applicable deadline.

(C) TQHA may accredit a broodmare for which an application is filed after December 31 of the year in which an ATB eligible foal is conceived; however, the breeder of that foal is not eligible to receive breeder awards for that foal.

~~[(D) A mare may leave Texas for racing purposes without losing its accreditation provided the mare returns to Texas each year before December 31 and remains in Texas until foaling. A mare may leave Texas for breeding or medical purposes without losing its accreditation provided the mare returns to Texas each year before August 15 and remains in Texas until foaling. All foals of an ATB broodmare are eligible to be accredited as ATB horses provided the mare is bred to an ATB stallion at least every other breeding. TQHA may require documentation regarding breeding activity to prove eligibility for accreditation.]~~

- (3) (No change.)
- (c) - (d) (No change.)
- (e) Organizational Structure.

(1) The TQHA shall maintain all ownership records for the Accredited Texas Bred Quarter Horse program. TQHA shall comply with all sections of the Act, including but not limited to

~~§§2028.101-.107 and 2030.001-.004, Tex. Occ. Code [the Act, §6-08 and §§9-01 - 9-04.] TQHA shall comply with the rules promulgated by the Commission, including but not limited to §§303.81 - 303.85 of this title (relating to General Provisions.)~~

(2) - (4) (No change.)

(f) (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 March 25, 2019.

TRD-201900868

Chuck Trout
Executive Director
Texas Racing Commission

Earliest possible date of adoption: May 5, 2019

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



CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER B. OPERATIONS OF RACETRACKS

DIVISION 2. FACILITIES AND EQUIPMENT

16 TAC §309.129

The Texas Racing Commission ("the Commission") proposes an amendment to 16 TAC §309.129 Automatic Banking Machines. The proposed amendment is a non-substantive change to this section to update the citation to Vernon's Civil Statutes in light of SB 1969 (85th Legislature, Regular Session, 2017), which codified the Texas Racing Act as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendment. Enforcing or administering the amendment does not have foreseeable implications relating to cost or revenues of the state or local governments.

ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendment is in effect, the anticipated public benefit will be accuracy in the statutory citation. There is no probable economic cost to persons required to comply with the amendment.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Trout has determined that the proposed amendment will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendment is in effect, the government growth impact is as follows: the amendment does not create or eliminate a government program;

the amendment does not create any new employee positions or eliminate any existing employee positions; implementation of the amendment does not require an increase or decrease in future legislative appropriations to the agency; the amendment does not require an increase or decrease in fees paid to the agency; the amendment does not create a new regulation; the amendment does not expand or limit existing regulations; the amendment does not repeal existing regulations; the amendment does not increase or decrease the number of individuals subject to the rule's applicability; and the amendment does not significantly positively or negatively affect this state's economy.

EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendment will have no adverse economic effect on small or micro-businesses, and, therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

IMPACT ON EMPLOYMENT CONDITIONS

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

ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

There will be no adverse effect on rural communities as a result of the proposed amendment. Because the agency has determined that the proposed amendment will have no adverse economic effect on rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that this proposed amendment does not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

TAKINGS IMPACT STATEMENT

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

EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendment will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code §2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e (codified as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019).

§309.129. Automatic Banking Machines.

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

(c) Configuration. An automatic banking machine placed on association grounds must be configured with the following restrictions:

(1) - (2) (No change.)

(3) Before the customer authorizes the transaction, the machine must display a screen that notifies the customer of the statutory fee and permits the customer to cancel the transaction. The notice must state the following or its equivalent: UNDER TEXAS RACING ACT[,] §2027.004 [~~§11.04(E)~~], A \$1 FEE MUST BE COLLECTED ON EACH TRANSACTION AT THIS MACHINE FOR DEPOSIT INTO THE TEXAS STATE TREASURY.

(d) - (f) (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 March 25, 2019.

TRD-201900869

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: May 5, 2019

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



CHAPTER 321. PARI-MUTUEL WAGERING

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §321.1, Definitions and General Provisions; §321.36, Unclaimed Outs and Wagers; §321.318, Special Wager; §321.503, Purses; and §321.509, Escrowed Purse Account. The proposed amendments are non-substantive updates to these sections to eliminate citations to Vernon's Civil Statutes in light of SB 1969 (85th Legislature, Regular Session, 2017), which codified the Texas Racing Act as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit will be accuracy in statutory citations and the elimination of outdated citations. There is no probable economic cost to persons required to comply with the amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect the local economy, so the agency is not required to prepare

a local employment impact statement under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

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

EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

IMPACT ON EMPLOYMENT CONDITIONS

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

ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

There will be no adverse effect on rural communities as a result of the proposed amendments. Because the agency has determined that the proposed amendments will have no adverse economic effect on rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

TAKINGS IMPACT STATEMENT

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

EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box

12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

SUBCHAPTER A. MUTUEL OPERATIONS

DIVISION 1. GENERAL PROVISIONS

16 TAC §321.1

STATUTORY AUTHORITY

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code §2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e (codified as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019).

§321.1. Definitions and General Provisions.

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

(1) - (4) (No change.)

(5) Guest racetrack--a racetrack facility at which a simulcast race is received and offered for wagering purposes; a receiving location, as defined in the Act, §2021.003 [§1-03(64)].

(6) Host racetrack--a racetrack facility at which a race is conducted and simulcast for wagering purposes; a sending track, as defined in the Act, §2021.003 [§1-03(66)].

(7) Import simulcast--a simulcast race received at a racetrack facility.

(8) - (16) (No change.)

(17) Ticketless Electronic Wagering (E-wagering)--a form of pari-mutuel wagering in which wagers are placed and cashed through an electronic ticketless account system operated through a licensed totalisator vendor in accordance with §2027.002 [§11-04] of this Act. Wagers are automatically debited and credited to the account holder.

(18) - (23) (No change.)

(b) - (c) (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 March 25, 2019.

TRD-201900870

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: May 5, 2019

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



DIVISION 3. MUTUEL TICKETS AND

VOUCHERS

16 TAC §321.36

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code

§2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e (codified as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019).

§321.36. Unclaimed Outs and Vouchers.

[Pursuant to the Act, §3.07, to] To pay the charges associated with the medication or drug testing, an association may use the money held by the association to pay outstanding tickets and pari-mutuel vouchers. If additional amounts are needed to pay the charges, the association shall pay those additional amounts. If the amount of outstanding tickets and pari-mutuel vouchers held exceeds the amount needed to pay the charges, the association may retain the excess amount as outstanding tickets and pari-mutuel vouchers expire.

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 March 25, 2019.

TRD-201900871

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: May 5, 2019

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



SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §321.318

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code §2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e (codified as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019).

§321.318. Special Wager.

(a) Special wager authorized.

(1) (No change.)

(2) A special wager must be based on the outcome of a race or races and comply with the definition of pari-mutuel wagering as defined by the Act, §2021.003 [§1.03(18)]. The wager must be based on the performance of a specific race animal or animals in a race or races.

(3) (No change.)

(b) - (c) (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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Chuck Trout

Executive Director

Texas Racing Commission

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



SUBCHAPTER D. SIMULCAST WAGERING DIVISION 3. SIMULCASTING AT HORSE RACETRACKS

16 TAC §321.503, §321.509

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code §2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e (codified as Subtitle A-1, Title 13, Texas Occupations Code, effective April 1, 2019).

§321.503. Purses.

(a) To be approved by the executive secretary, an association's request for approval to import a simulcast must allocate for purses as follows:

(1) for a same species simulcast, as provided by the Act, §2028.101 [§6.08]; and

(2) (No change.)

(b) - (c) (No change.)

§321.509. Escrowed Purse Account.

(a) At least once a year, the Commission shall distribute all funds accrued in the escrowed purse account [created by the Act, §6.091(e)]. The executive secretary shall establish a deadline for receiving requests for distribution from the account and publicize that deadline to the horse racetrack associations at least 30 days before the deadline. The associations when requesting for distribution from the account shall also recommend the percentages by which it will divide the escrowed purse account revenue among the various breeds of horses.

(b) The Commission shall determine the amount of the distribution to each racetrack in accordance with the standards set forth in the Act, §2028.204-205 [§6.091(e) and (f)].

(c) - (e) (No change.)

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

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

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Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: May 5, 2019

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



SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §321.320

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §321.320, Super Hi-Five. This section establishes the super hi-five wager, which involves selecting the first five finishers, in order, in a race. The proposed amendments would permit a track to carry over a pool unexpectedly remaining at the end of a meet to the next meet of the same breed, rather than the next meet of a different breed.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit will be keeping dollars wagered on a particular breed going to payouts on races of the same breed. There is no probable economic cost to persons required to comply with the rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

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

EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

IMPACT ON EMPLOYMENT CONDITIONS

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

ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

There will be no adverse effect on rural communities as a result of the proposed amendments. Because the agency has determined that the proposed amendments will have no adverse economic effect on rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

TAKINGS IMPACT STATEMENT

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

EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code §2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act, and §11.01 (codified as Tex. Occ. Code §2027.001, effective April 1, 2019), which requires the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races.

§321.320. *Super Hi-Five.*

(a) - (i) (No change.)

(j) If the final or designated mandatory payoff performance is canceled or the pool has not been distributed under subsection (i) of this section, the pool shall be deposited in an interest-bearing account approved by the executive secretary. The pool plus all accrued interest shall then be carried over and added to a [the] super hi-five pari-mutuel pool in a subsequent [the following] race meeting within the following twelve months, on a date and performance designated by the association with the approval of the executive secretary. The designation of the date and performance must be made prior to the start of the association's next live racing meet.

(k) - (m) (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 March 25, 2019.

TRD-201900867

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: May 5, 2019

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING ADULT AND COMMUNITY EDUCATION

19 TAC §89.1311

The Texas Education Agency (TEA) proposes the repeal of §89.1311, concerning the memorandum of understanding to provide educational services to released offenders. The proposed repeal is necessary because the statutory authority for adult basic education was transferred from the TEA to the Texas Workforce Commission (TWC) effective September 1, 2013.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with Texas Government Code, §508.318, §89.1311 establishes objectives to provide educational services that will assist releasees in remaining outside of the prison system and integrating into the community. Effective October 1, 1998, the rule addresses identifying and coordinating with local adult education providers, assessment of student needs, staff development, and process for referrals with local parole offices.

Senate Bill (SB) 307, 83rd Texas Legislature, Regular Session, 2013, transferred the authority for adult basic education from TEA to TWC.

The proposed repeal of §89.1311 is necessary because the statutory authority for the rule was transferred to TWC. TEA no longer has authority or funding for adult education.

FISCAL IMPACT: Lily Laux, deputy commissioner for school programs, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

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

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

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

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

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

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be removing a rule for which TEA no longer has statutory authority. SB 307, 83rd Texas Legislature, Regular Session, 2013, transferred authority for adult basic education from TEA to TWC. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins April 5, 2019, and ends May 6, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 5, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The repeal is proposed under Texas Government Code, §508.318, which required the Texas Education Agency (TEA) to coordinate with the Texas Board of Criminal Justice to provide literacy programs for releasees; and Senate Bill 307, Section 3.01, 83rd Texas Legislature, Regular Session, 2013, which transferred adult education and literacy programs from TEA to the Texas Workforce Commission.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Government Code, §508.318, and Senate Bill 307, Section 3.01, 83rd Texas Legislature, Regular Session, 2013.

§89.1311. Memorandum of Understanding To Provide Educational Services to Released Offenders.

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 March 25, 2019.



CHAPTER 100. CHARTERS
SUBCHAPTER AA. COMMISSIONER'S
RULES CONCERNING OPEN-ENROLLMENT
CHARTER SCHOOLS
DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

The Texas Education Agency (TEA) proposes an amendment to §100.1010, concerning charter school performance frameworks. The proposed amendment would modify the existing section to comply with statutory requirements, track agency policy including academic accountability and the Financial Integrity Rating System of Texas (FIRST), and more fully utilize available school data.

BACKGROUND INFORMATION AND JUSTIFICATION: The existing commissioner's rules in 19 TAC Chapter 100, Subchapter AA, cover a wide range of issues related to open-enrollment charter schools. The rules are organized in divisions addressing related subject matter, as follows: Division 1, General Provisions; Division 2, Commissioner Action and Intervention; Division 3, Charter School Funding and Financial Operations; Division 4, Property of Open-Enrollment Charter Schools; Division 5, Charter School Governance; and Division 6, Charter School Operations.

Section 100.1010 was adopted effective September 18, 2014, and was last amended effective August 2, 2018. The rule is issued under Texas Education Code (TEC), §12.1181, which requires the commissioner to develop and adopt frameworks by which the performance of open-enrollment charter schools would be measured. The performance frameworks consist of several indices within academic, financial, and operational categories with data drawn from various sources, reflected in the Charter School Performance Framework (CSPF) Manual, which is included as a figure in the rule and updated every year pursuant to statutory requirement.

The proposed amendment would replace the 2017 CSPF Manual with the 2018 CSPF Manual as Figure: 19 TAC §100.1010(c). The 2018 version of the manual includes the following significant changes from the 2017 version.

The 2018 CSPF Manual would revise the manual's academic indicators to track agency policy pertaining to academic accountability, with indicators for overall academic performance, achievement status for subgroups, English language proficiency for English learners, and campus ratings status. The new manual would also revise financial frameworks to draw from FIRST for charter schools (Charter FIRST) as it relates to a school's short-term and long-term solvency. In addition, the new manual would add operational indicators addressing the requirement that a school have at least 50% of its students in tested grades, its eligibility to participate in the Child Nutrition Program, its appropriate handling of secure testing materials,

and its administrative cost ratio as reported in Charter FIRST. Finally, the 2018 CSPF Manual would revise indicators for adult high school diploma and industry certification charter schools to more fully utilize school data that is available.

FISCAL IMPACT: Joe Siedlecki, associate commissioner for improvements, innovations, and charters, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

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

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

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

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

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

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Siedlecki has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law and updating statutorily required charter school performance frameworks to indicate charter school performance as accurately as possible. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins April 5, 2019, and ends May 6, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 5, 2019. A form for submitting public comments is available on the TEA website

at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §12.1181, which directs the commissioner of education to develop and adopt open-enrollment charter school performance frameworks; and TEC, §29.259, which directs the commissioner of education to establish an adult high school diploma and industry certification charter school pilot program, including adoption of frameworks to measure the performance of such a school.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.1181 and §29.259.

§100.1010. Performance Frameworks.

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Framework (CSPF) Manual established under Texas Education Code (TEC), §12.1181. The CSPF Manual will include measures for charters registered under the standard system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) The performance of an adult high school diploma and industry certification charter school will be measured annually in the CSPF against a set of criteria established under TEC, §29.259.

(c) The assignment of performance levels for charter schools on the 2018 [2017] CSPF report is based on specific criteria, which are described in the 2018 [2017] *Charter School Performance Framework Manual* provided in this subsection.

Figure: 19 TAC §100.1010(c)

[Figure: 19 TAC §100.1010(e)]

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 March 25, 2019.

TRD-201900875

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 5, 2019

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



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §107.110

The State Board of Dental Examiners (Board) proposes this new rule 22 TAC §107.110, concerning baseless or unfounded complaints. The purpose of this rule is to create the structure for dismissal of baseless or unfounded complaints required by Texas Occupations Code §263.0074. Adoption of this rule is a requirement of Senate Bill 313 of the 85th Legislature.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's compliance with legislative directives and protection of the public safety and welfare by providing for appropriate resolution of complaints filed with the Board.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Board has determined that this rule will have no effects on a local economy and therefore a local employment impact statement is not required.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: The Board has determined this proposed rule will not have an adverse economic effect on small businesses, micro-businesses, or rural communities. Therefore, the Board is not required to prepare the economic impact statement or regulatory flexibility analysis.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase or decrease in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed rule may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a)-(b), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and permits the Board to adopt rules regarding its proceedings, and Texas Occupations Code

§263.0074, which directs the Board to adopt rules establishing criteria for determining baseless or unfounded complaints.

This rule implements Texas Occupations Code §263.0074.

§107.110. Baseless or Unfounded Complaints.

(a) Statutory Authorization and Purpose. Pursuant to Texas Occupations Code §263.0074, the Board shall dismiss baseless or unfounded complaints through the procedures described in subsections (c) and (d) of this section. If the Board determines that the complaint is not baseless or unfounded, the complaint shall be resolved through the procedures outlined in §107.200 of this title (relating to Disposition of a Filed Complaint).

(b) Definitions. The definitions provided in §107.100 of this title (relating to Definitions) shall apply to this section.

(c) Baseless or Unfounded Complaints. Within the first one-hundred-eighty days after the Board commences official investigation of a complaint, Board staff shall identify the classification of allegations in the complaint pursuant to §107.104 of this title (relating to Official Investigation of a Complaint) and determine if the complaint is baseless or unfounded by applying the following criteria:

(1) Failure to Specify a Violation of the Standard of Care. If the complaint submitted to the Board does not specify a procedure or service provided by the Respondent that may fall below the standard of care, Board staff shall dismiss the complaint.

(2) Failure to Describe a Sanitation Violation. If the complaint submitted to the Board does not describe conditions in the Respondent's practice that may violate laws or Board rules related to the sanitation of a dental office, Board staff shall dismiss the complaint.

(3) Failure to Describe Dishonorable Conduct. If the complaint submitted to the Board does not describe conduct by the Respondent which may be considered dishonorable under laws or Board rules, Board staff shall dismiss the complaint.

(4) Failure to Identify an Administrative Violation. If the complaint submitted to the Board does not identify a violation of the administrative requirements of the laws and Board rules related to licensure as a dentist or dental hygienist or registration as a dental assistant, Board staff shall dismiss the complaint.

(5) Failure to Describe a Business Promotion Violation. If the complaint submitted to the Board does not describe business promotion activities by the Respondent that may represent a violation of the laws and Board rules regarding business promotion, Board staff shall dismiss the complaint.

(6) Failure to Establish Practice of Dentistry without a License. If the complaint submitted to the Board does not provide sufficient detail to establish that the Respondent may have practiced dentistry or dental hygiene without a license, or that Respondent may have practiced as a dental assistant or dental laboratory without a registration, Board staff shall dismiss the complaint.

(7) Failure to Identify a Person or Entity Subject to Board Jurisdiction. If the complaint submitted to the Board does not provide sufficient information to identify a Respondent who is a person or entity subject to the jurisdiction of the Board, or if the complaint alleges standard of care, sanitation, dishonorable conduct, administrative, or business promotion allegations against a deceased or unlicensed/unregistered Respondent, Board staff shall dismiss the complaint. Nothing in this section shall be construed to prohibit the Board from utilizing the complaint and associated information to pursue action against an unlicensed person for the practice of dentistry or dental hygiene without a license, or from providing the complaint and associated information to

the appropriate state agency with jurisdiction over the person identified in the complaint.

(d) Notification and Record of Complaint Dismissal. The Board shall provide a notice to the person who filed the baseless or unfounded complaint identifying the reasons for dismissal from subsection (c) of this section. The Board shall also retain in the records of each baseless or unfounded complaint the reason for the dismissal from subsection (c) of this section.

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

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

TRD-201900888

Alex Phipps

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-9380



CHAPTER 108. PROFESSIONAL CONDUCT

SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.14

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.14, concerning pediatric and special needs case management and protective stabilization. This amendment to the existing rule will update and clarify the applicability of the rule in light of changes to the guidelines published by the American Academy of Pediatric Dentistry and stakeholder comment received by the Board during the February 1, 2019, stakeholder meeting. This rule is being proposed as a result of a petition for rulemaking filed with the Board by the Texas Dental Association. After consideration of the petition at the August 31, 2018, meeting of the Board, the Board found that the petition had merit, and directed Board staff to gather stakeholder input and initiate a rulemaking proceeding.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's compliance with legislative directives and the protection of the public safety and welfare by clarifying the indications, contraindications, and practice requirements for safe utilization of protective stabilization for pediatric and special needs dental cases.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §108.14, and the current Board rule does not specifically effect any geographic region of Texas. No expansion of applicably

will occur by the adoption of this rule. Therefore, no new local economies will be effected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase or decrease in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

No statutes are affected by this rule.

§108.14. *Pediatric and Special Needs Case Management; Protective Stabilization.*

(a) Parent or Guardian. In this section the term "parent or guardian" refers to one of the following:

(1) the natural or biological father or mother of a child with full parental legal rights;

(2) a custodial parent who in the case of divorce has been awarded legal custody of a child;

(3) a person appointed by a court to be the legal guardian of a minor child; or

(4) a foster parent - a non-custodial parent caring for a child without parental support or protection who was placed by local welfare services or a court order.

~~(a) The Texas State Board of Dental Examiners utilizes the "Protective Stabilization for Pediatric Dental Patients" published in the American Academy of Pediatric Dentistry in determining the standard of care for protective stabilization used in dentistry.~~

(b) Applicability. This section applies to the use of protective stabilization when treating pediatric and special needs patients.

(1) For purposes of this section a "knee-to-knee examination" during which the dentist and the patient's parent or guardian put knees together to create a "dental chair" is not considered protective stabilization. A knee-to-knee exam does not use any apparatus or equipment to restrain the patient and does not involve the use of dental personnel other than the treating dentist.

(2) Although a mouth prop may be used as an immobilization device, the use of a mouth prop in a compliant child is not considered protective stabilization for purposes of this section.

(c) ~~[(b)] Purpose.~~ Infants, children, adolescents, and patients with [Pediatric and] special health care needs [patients] may require protective stabilization [specialized case management] to prevent injury and protect the health and safety of the patient, practitioner, and staff, and to safely expedite emergency treatment for a pre-cooperative child, uncooperative child, or patient with special health care needs if it is deemed necessary for the long-term health of the patient. The goals of protective stabilization as a part of individualized patient behavior guidance [patient management] are to establish communication throughout dental care; alleviate fear and anxiety; deliver quality dental care; build a trusting relationship between the patient, parent or guardian and the dental professionals; and promote the patient's positive attitude toward dental care. Protective [In addition to patient management, it may be necessary to use protective] stabilization is an advanced behavior guidance technique in dentistry that can be used for treatment involving pediatric and special needs patients.

(d) ~~[(e)] Protective Stabilization.~~

~~[(1)] Protective stabilization is considered an advanced behavior guidance technique in dentistry.~~

(1) ~~[(2)] Protective stabilization is the physical limitation of a patient's movement by a person, restrictive equipment, materials or devices for a finite period of time [any manual method, physical or mechanical device, material or equipment that immobilizes or reduces the ability of a patient to move his or her arms, legs, body or head freely].~~ Two types of protective stabilization are:

(A) active immobilization [stabilization], which involves the physical limitation of movement [restraint] by another person, such as the parent or guardian, dentist, or dental auxiliary; and

(B) passive immobilization, which utilizes a restraining device.

(2) ~~[(3)] Protective stabilization shall not be used as a means of discipline, convenience, or retaliation. Protective stabilization shall not be used for "routine," non-emergent treatment needs or in order to accomplish full mouth or multiple quadrant dental rehabilitation. Protective stabilization shall cause no serious consequences, such as physical or psychological harm, loss of dignity, or violation of the patient's rights. It is the responsibility of the treating dentist and the dental team to guard against these aforementioned outcomes.~~

(3) ~~[(4)] Training Requirements.~~ A dentist utilizing protective stabilization shall have completed advanced training either through:

(A) an accredited post-doctoral program or pediatric dentistry residency program that provides clinical and didactic education in advanced behavior management techniques; or

(B) an extensive and focused continuing education course of no less than 8 hours in advanced behavior management that includes both didactic and clinical education pertaining to Protective Stabilization.

(4) [(5)] Practitioner Supervision. The dentist shall not delegate the use of protective stabilization to the dental staff, but they may assist the dentist as necessary.

(5) [(6)] Informed Consent.

(A) Protective stabilization requires written informed consent from the parent or guardian which should be obtained separately from consent for other procedures to ensure parent awareness of the procedure and utilization of protective stabilization. Written informed consent should be documented in the patient's records.

(B) Informed consent shall include an explanation, by the treating dentist, of the benefits and risks of protective stabilization, alternative behavior guidance techniques, and a clear explanation of the anticipated protective stabilization techniques to be used, including the possible use of restraining devices, and a statement that a parent or guardian may revoke informed consent for protective stabilization at any time.

(C) If possible, the treating dentist should obtain informed consent for protective stabilization on a day separate from the treatment requiring protective stabilization.

(D) If the patient's behavior during treatment requires a change in the protective stabilization, separate informed consent must be obtained and documented.

(E) When providing dental care for adolescents or adults with mild intellectual disabilities, patient assent for protective stabilization should also be considered. Informed consent should take into account the patient's feelings towards the use of protective stabilization. A conditional comprehensive explanation of the technique to be used and the reasons for application should be provided.

(F) A parent or guardian may revoke informed consent for protective stabilization at any time if they believe the patient may be experiencing physical or psychological trauma due to immobilization.

(6) [(7)] Parental or Guardian Presence. The treating dentist [Practitioners] should consider allowing parental or guardian presence in the operatory or direct visual observation of the patient during use of protective stabilization unless the health and safety of the patient, parent, guardian, or dental staff would be at risk. If parents or guardians are denied access, they must be informed of the reason with documentation of the explanation in the patient's chart.

(7) [(8)] Pre-Stabilization Considerations. Prior to utilizing protective stabilization, the dentist shall consider the following:

- (A) alternative behavior management methods;
- (B) the dental needs of the patient and the urgency of the treatment;
- (C) the effect on the quality of dental care during stabilization;
- (D) the patient's comprehensive, up-to-date medical history;
- (E) the patient's physical condition, such as neuromuscular or skeletal disorders; and
- (F) the patient's emotional development.

(8) [(9)] Equipment. The restraining devices used for dental procedures should include the following characteristics:

- (A) ease of use;
- (B) appropriately sized for the patient;

(C) soft and contoured to minimize potential injury to the patient while maintaining blood flow and respiration;

- (D) specifically designed for protective stabilization; and
- (E) ability to be disinfected.

(9) [(10)] Indications. Protective stabilization is indicated when:

(A) a patient requires immediate diagnosis and/or urgent limited treatment and cannot cooperate due to emotional and cognitive developmental levels, lack of maturity, or medical and physical conditions;

(B) urgent [emergent] care is needed and uncontrolled movements endanger the patient, staff, or dentist;

(C) treatment is initiated without protective stabilization and the patient becomes uncooperative, causing uncontrolled movements that endanger the patient, staff, or dentist, and protective stabilization will enable the dentist to protect the patient's safety and help to expedite completion of treatment [reach a safe stopping point];

(D) a sedated patient requires limited stabilization to help reduce untoward movements during treatment [becomes uncooperative during treatment];

(E) an uncooperative patient requires limited treatment and sedation or general anesthesia may not be an option because the patient does not meet sedation criteria, there is a long operating room wait time, financial considerations, and/or parental or guardian preferences after other options have been discussed; or

(F) [(E)] a patient with special health care needs exhibits [for whom] uncontrolled movements that would be harmful or significantly interfere with the quality of care.

(10) [(11)] Contraindications. Protective stabilization is contraindicated for:

- (A) cooperative, non-sedated patients;
- (B) patients who cannot be immobilized safely due to associated medical, psychological, or physical conditions;
- (C) patients with a history of physical or psychological trauma due to restraint; [and]
- (D) patients with non-emergent treatment needs in order to accomplish full mouth or multiple quadrant dental rehabilitation; or[-]
- (E) the dentist's convenience.

(11) [(12)] Documentation. In addition to the record requirements in §108.8 of this title (relating to Records of the Dentist), the patient records shall include:

- (A) indication for stabilization;
- (B) type of stabilization;
- (C) informed consent for protective stabilization;
- (D) reason for parental exclusion during protective stabilization (when applicable);
- (E) the duration of application of stabilization;
- (F) behavior evaluation/rating monitoring during stabilization;
- (G) any adverse outcomes, such as bruising or skin markings; and

(H) management implications and plans for future appointments.

(12) Patients with Special Health Care Needs.

(A) Children and adolescents with special health care needs will at times require protective stabilization to facilitate completion of necessary dental treatment. Aggressive, uncontrolled, and impulsive behaviors along with involuntary movements may cause harm to both the patient and dental personnel. Use of protective stabilization reduces potential risks and provides safer management of patients with special health care needs. When considering protective stabilization during dental treatment for special health care needs patients, the dentist in collaboration with the parent or guardian must consider the importance of treatment and the safety consideration of the restraint.

(B) The dentist should be cautious when utilizing protective stabilization on children and adolescents receiving multiple medications. The propensity of adverse central nervous system or cardiac events occurring may increase when protective stabilization is instituted on patients receiving psychotropic or other medications.

(C) The dentist should consider utilizing alternative behavioral approaches to reduce movement and resistance as well as increasing cooperation when providing medically necessary dental care for patients with special health care needs prior to implementing protective stabilization, such as:

(i) distraction via counting, positional modeling, and repetitive tasks and visits;

(ii) shaping;

(iii) modeling;

(iv) sensory integration;

(v) desensitization;

(vi) reinforcement; or

(vii) non-pharmacological behavior guidance approaches by skill training in acceptable behaviors in the dental operatory.

(c) [(d)] Deferred Treatment. Treatment deferral or discontinuance shall be considered in cases when treatment is in progress and the patient's behavior becomes hysterical or uncontrollable. In such cases, the dentist shall halt the procedure, [;] discuss the situation with the parent or guardian, [;] and either select another approach for treatment or defer treatment based upon the dental needs of the patient. Upon the decision to defer treatment, the dentist shall immediately complete the necessary steps to bring the procedure to a safe conclusion before ending the appointment. A recall schedule shall be recommended after evaluation of the patient's risk, oral health needs, and behavior abilities.

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 March 25, 2019.

TRD-201900877

Alex Phipps

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-9380



CHAPTER 110. SEDATION AND ANESTHESIA

22 TAC §110.17

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §110.17, concerning sedation/anesthesia of pediatric patients. This amendment to the existing rule will clarify to permit holders and Board staff the requirements for training related to observation of live cases and high-fidelity sedation simulator cases. The intention of this amendment is to ensure course providers may offer observations of high-fidelity sedation simulators in appropriate situations. This rule is being proposed as a result of the course provider and stakeholder feedback received by Board staff following the adoption 22 TAC §110.17, and stakeholder feedback offered at the Board's anesthesia committee meetings.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's compliance with legislative directives and the protection of the public safety and welfare by clarifying the requirements for compliance with sedation/anesthesia course requirements.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §110.17, and the current Board rule does not specifically effect any geographic region of Texas. No expansion of applicability will occur by the adoption of this rule. Therefore, no new local economies will be effected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase or decrease in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days

following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §258.1554(b), which authorizes the Board to establish limitations on the administration of anesthesia by a permit holder to a pediatric or high-risk patient.

This rule implements Texas Occupations Code §258.1554(b).

§110.17. *Sedation/Anesthesia of Pediatric Patients.*

(a) For purposes of this rule, the following definitions apply:

(1) "Pediatric patient" means a patient younger than 13 years of age.

(2) "Board-approved education program" means an in-person or online program provided by a recognized continuing education provider pursuant to [Board rule 22 TAC] §104.2 of this title (relating to Providers) and any subsequent amendments.

(b) On or after September 1, 2019, a permit holder may not administer sedation/anesthesia under a level 2, level 3, or level 4 permit to a pediatric patient unless the permit holder has completed the requirements of paragraphs (1) or (2) of this subsection. Permit holders must have:

(1) completed a university or hospital-based residency at least 12 months in length. All permit holders completing a university or hospital-based residency after September 1, 2019, must confirm that during the residency, the permit holder completed satisfactory management of sedation/anesthesia involving pediatric patients sedated/anesthetized at the highest level of permit held. The cases must include: (i) at least three (3) live cases in which the permit holder is the primary sedation/anesthesia provider, or (ii) at least fifteen (15) cases involving pediatric patients sedated/anesthetized where no more than seven (7) cases are observed on live patients or high-fidelity sedation simulators, and at least eight (8) cases are performed as part of a hands-on high-fidelity sedation simulation center or program; or

(2) completed a board-approved education program that includes a minimum of sixteen (16) hours of didactic training and instruction in sedation/anesthesia of pediatric patients. The entire board-approved education program, including all didactic and clinical requirements, must be completed within a two-year period of beginning the Board-approved program. Successful completion of the program must include passing an evaluation to demonstrate satisfactory completion of the course requirements. Didactic education must include:

(A) pre-anesthetic patient assessment/evaluation for pediatric patients;

(B) physical evaluation and medical history of pediatric patients, including obesity, limited neck mobility, micro/retrognathia, macroglossia, Mallampati score, and limited oral opening;

(C) pediatric anatomical and physiological differences;

(D) pediatric respiratory assessment, including airway anatomy, physiology, and management;

(E) informed consent by parent, guardian, or care-giver;

(F) sedation/anesthesia pharmacology;

(G) sedation/anesthesia management of pediatric patients;

(H) pediatric patient monitoring;

(I) peri-operative complications and emergencies;

(J) emergency management of pediatric patients, including pediatric anesthesia equipment and resuscitation supplies;

(K) sedation/anesthesia technique;

(L) sedation/anesthesia record keeping;

(M) patient recovery and discharge;

(N) pediatric case selection and reference behavior scale; and

(O) permit holders shall have completed satisfactory management of sedation/anesthesia involving pediatric patients sedated/anesthetized at the highest level of permit held. All of the cases must be performed and documented under the on-site instruction and direct supervision of a licensed dentist authorized to administer sedation/anesthesia to pediatric patients. The cases must include: (i) at least three (3) live cases in which the permit holder is the primary sedation/anesthesia provider, or (ii) at least fifteen (15) cases involving pediatric patients sedated/anesthetized where no more than seven (7) cases are observed on live patients or high-fidelity sedation simulators, and at least (8) cases are performed as part of a hands-on high-fidelity sedation simulation center or program.

(c) A permit holder is authorized to administer sedation/anesthesia under a level 2, level 3, or level 4 permit to a pediatric patient if they have completed the requirements above and have requested and received authorization from the Board to administer sedation/anesthesia to pediatric patients. Board staff shall promulgate appropriate forms for permit holders qualifying under subsection (b)(1) and (b)(2) of this section. The permit holder must attest to their advanced training satisfying the requirements of subsection (b)(1) or (b)(2) of this section, and will be required to produce proof of completion as part of a permit inspection or an investigation of a complaint involving sedation/anesthesia of a pediatric patient.

(d) The education hours described in subsection (b)(2) of this section can be applied towards the permit holder's continuing education requirement for maintaining a sedation/anesthesia permit.

(e) If qualifying under subsection (b)(2) of this section, the didactic and clinical training described in subsection (b)(2) of this section may not be fulfilled by the same didactic and clinical training used to fulfill the requirements for initial sedation/anesthesia permit issuance.

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 March 25, 2019.

TRD-201900879

Alex Phipps

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-9380



22 TAC §110.18

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §110.18, concerning the inspection of sedation/anesthesia providers. This amendment to the existing rule will clarify to permit holders and Board staff the appropriate resolution of certain violations identified during the inspection process. The intention of this amendment is to limit the number of cases escalated to Risk-Based/Tier 2 inspections in situations where violations are recordkeeping-based and do not pose a major threat to the public. This rule is being proposed as a result of the inspections performed following the adoption 22 TAC §110.18, and feedback from permit holders, Board staff, and Board members regarding the process.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's compliance with legislative directives and the protection of the public safety and welfare by clarifying the requirements for compliance with sedation/anesthesia inspections.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §110.18, and the current Board rule does not specifically effect any geographic region of Texas. No expansion of applicability will occur by the adoption of this rule. Therefore, no new local economies will be effected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase or decrease in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule does not impose a cost on a regulated person and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, com-

ments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §258.156, which authorizes the Board to establish an inspection program for all providers of level 2, 3 or 4 sedation/anesthesia permits.

This rule implements Texas Occupations Code §258.156(b) - (c).
§110.18. Inspection of Sedation/Anesthesia Providers.

(a) The Board may conduct inspections to enforce Chapter 110 of this title (relating to Sedation and Anesthesia) [the Board's rules], including inspections of a licensee, an office site, equipment, a facility, and any document required by Board rules. The inspections shall not identify violations outside the applicable sedation/anesthesia rules in effect for each permit level at the time of the inspection. The Board may employ Board staff or contract with another state agency or qualified person to conduct these inspections.

(b) Unless it would jeopardize an ongoing investigation, the Board shall provide at least ten business days' notice before conducting an on-site inspection under this section.

(c) Regardless of issue date, all level 2, 3 and 4 permit holders will be subject to at least one inspection prior to September 1, 2022. All level 2, 3, and 4 permit holders who received their initial permit after March 1, 2018, must be inspected within a year of receiving their permit.

(d) Compliance/Tier 1 inspections: The initial inspection will be a compliance inspection, in which a Board staff member will evaluate the permit holder's compliance with the Board's rules through completing a checklist and auditing one sedation/anesthesia record of the inspector's choosing that was completed prior to the date the Board notified the licensee of the inspection. The record shall be of treatment for the highest level of sedation/anesthesia permit held by the permit holder, and will apply the Board rules in effect at the time the patient was treated. The inspector shall be a member of Board staff and will receive training in recognizing the checklist requirements and in evaluating sedation/anesthesia records. If the inspection results in the identification of a violation of the Board's rules found in Chapter 110, the permit holder must immediately cease providing sedation/anesthesia services until satisfactory proof is provided to Board staff that the violation has been corrected. Board staff shall provide contact information for both an inspector and supervisor of the inspector so that the permit holder may provide proof of remediation as soon as possible. Any violation of this cease and desist requirement shall represent grounds for disciplinary action. A failure by Board staff to respond within two business days to permit holder's satisfactory proof of remediation shall represent an affirmative defense to disciplinary action. Additionally, the permit holder shall pay an amount of not more than five hundred dollars (\$500.00) as necessary to cover the expenses of additional review and inspection by Board staff as a result of any violations identified during the initial inspection. If, after a completed Compliance/Tier 1 inspection, the only violation(s) identified by Board staff relate to the time-interval recording requirements contained in the inspection items numbered 3 and 4 of the "Patient Record Audit" portion of the attached graphic "Anesthesia Levels 2-4 Inspection Form" for this section, then the violation(s) may be remedied by the Respondent through the execution of a sworn affidavit provided by Board staff. The Respondent's affidavit must attest that the Respondent shall observe the requirements

of the applicable sedation/anesthesia rule sections requiring time interval recording for each permit level the Respondent holds. The inspection checklist can be previewed here:

Figure: 22 TAC §110.18(d) (No change.)

(e) Risk-based/Tier 2 inspections: A permit holder with a violation on a compliance/tier 1 inspection that is not remedied within thirty (30) days shall be referred to a risk-based inspection. Additionally, a Board member sitting on an informal settlement conference panel pursuant to Tex. Occ. Code §263.0072 may refer a permit holder to a risk-based inspection. The risk-based inspection will include the same factors as a compliance inspection, as well as a competency evaluation consisting of an audit of five sedation/anesthesia records of the inspector's choosing. The records shall be of treatment records for the highest level of sedation/anesthesia permit held by the permit holder, and shall apply the Board rules in effect at the time the patient was treated. Review of the five sedation/anesthesia records shall be performed by members of the Board's dental review panel process pursuant to Tex. Occ. Code §255.0065 who currently hold the same or higher level of sedation/anesthesia permit. The dental review panel reviewer shall prepare a report and note any violations or concerns with the permit holder's competency, and the report shall be reviewed following the procedure described in Tex. Occ. Code §255.0067. Any violation found during the risk-based inspection may result in the filing of a complaint and complaint resolution pursuant to the Board's informal disposition process in [22 Texas Administrative Code] §107.63 of this title (relating to Informal Disposition and Mediation). The Executive Committee of the Board may order the emergency temporary suspension of a permit if the risk-based inspection reveals evidence of a clear, imminent, or continuing threat to the health or well-being of the public.

(f) Inactive status: A permit holder may forego an inspection if they submit a notarized, Board-issued affidavit that they will not administer levels 2, 3, or 4 sedation/anesthesia until first notifying the Board in writing that they wish to resume those activities. A permit holder must complete a compliance/Tier 1 inspection prior to resuming the administration of sedation/anesthesia at the inactive permit level. The permit holder must comply with continuing education and any other permit requirements during this time. During the period of inactive status, a permit holder may not delegate any inactive-status level of sedation/anesthesia to a certified registered nurse anesthetist or any other dental or medical professional except a dentist with a permit issued by the Board for the procedure being performed or a physician anesthesiologist licensed by the Texas Medical Board. If the permit holder is later found to have administered or delegated the administration of level 2, 3, or 4 sedation/anesthesia while in inactive status, the Board shall pursue revocation of their dental license.

(g) Exempt-location status: The Board shall not inspect a level 2, 3, or 4 permit holder who provides those services exclusively in a state-licensed hospital or state-licensed ambulatory surgery center. The permit holder must attest to that fact with a notarized, Board-issued affidavit and may not provide those services at a non-exempt location until first notifying the Board in writing and successfully completing a compliance/Tier 1 inspection. During the period of exempt-location status, a permit holder may not delegate the administration of any level of sedation/anesthesia to a dental or medical professional outside a state-licensed hospital or state-licensed ambulatory surgery center. If they are later found to have administered or delegated the administration of level 2, 3, or 4 sedation/anesthesia in a non-exempt location, the Board shall pursue revocation of their dental license.

(h) Group practice inspections. The Board shall permit group practices to request an inspection of all permit holders in a single location during one inspection visit. Permit holders shall inform Board staff

upon receiving notice of an inspection their wish to receive a combined group practice inspection, and Board staff shall accommodate this request as feasible while ensuring a group inspection shall not jeopardize an ongoing investigation. Board staff shall ensure that group practice inspection requests do not create unnecessary delays to the completion of the inspection process and may decline the request as needed to ensure timely completion of all scheduled inspections.

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 March 25, 2019.

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Alex Phipps

General Counsel

State Board of Dental Examiners

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-9380



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.7

The Texas State Board of Pharmacy proposes amendments to §281.7, concerning Grounds for Discipline for a Pharmacist License. The amendments, if adopted, update the grounds for disciplinary action against a pharmacist license after receipt of a warning notice from the Board to reflect current agency policies and procedures and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide grounds for disciplinary action against a pharmacist license that accurately reflect agency policies and procedures. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

- (1) The proposed rule does not create or eliminate a government program;
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;

- (4) The proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) The proposed rule does not create a new regulation;
- (6) The proposed rule both limits and expands an existing regulation;
- (7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

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

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

§281.7. Grounds for Discipline for a Pharmacist License.

(a) For the purposes of the Act, §565.001(a)(2), "unprofessional conduct" is defined as engaging in behavior or committing an act that fails to conform with the standards of the pharmacy profession, including, but not limited to, criminal activity or activity involving moral turpitude, dishonesty, or corruption. This conduct shall include, but not be limited to:

- (1) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription;
- (2) dispensing a prescription drug order pursuant to a prescription from a practitioner as follows:
 - (A) the dispensing of a prescription drug order not issued for a legitimate medical purpose or in the usual course of professional practice shall include the following:
 - (i) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature; or
 - (ii) dispensing controlled substances or dangerous drugs when the pharmacist knows or reasonably should have known that the controlled substances or dangerous drugs are not necessary or required for the patient's valid medical needs or for a valid therapeutic purpose;
 - (B) the provisions of subparagraph (A)(i) and (ii) of this paragraph are not applicable for prescriptions dispensed to persons with intractable pain in accordance with the requirements of the Intractable Pain Treatment Act, or to a narcotic drug dependent person in accordance with the requirements of Title 21, Code of Federal Regulations, §1306.07, and the Regulation of Narcotic Drug Treatment Programs Act;
- (3) delivering or offering to deliver a prescription drug or device in violation of this Act, the Controlled Substances Act, the Dangerous Drug Act, or rules promulgated pursuant to these Acts;

- (4) acquiring or possessing or attempting to acquire or possess prescription drugs in violation of this Act, the Controlled Substances Act, ~~the~~ [or] Dangerous Drug Act, or rules adopted pursuant to these Acts;
- (5) distributing prescription drugs or devices to a practitioner or a pharmacy not in the course of professional practice or in violation of this Act, the Controlled Substances Act, Dangerous Drug Act, or rules adopted pursuant to these Acts;
- (6) refusing or failing to keep, maintain or furnish any record, notification or information required by this Act, the Controlled Substances Act, ~~the~~ Dangerous Drug Act, or ~~rules~~ [any rule] adopted pursuant to these Acts;
- (7) refusing an entry into any pharmacy for any inspection authorized by the Act;
- (8) making false or fraudulent claims to third parties for reimbursement for pharmacy services;
- (9) operating a pharmacy in an unsanitary manner;
- (10) making false or fraudulent claims concerning any drug;
- (11) persistently and flagrantly overcharging for the dispensing of controlled substances;
- (12) dispensing controlled substances or dangerous drugs in a manner not consistent with the public health or welfare;
- (13) failing to practice pharmacy in an acceptable manner consistent with the public health and welfare;
- (14) refilling a prescription upon which there is authorized "prn" refills or words of similar meaning, for a period of time in excess of one year from the date of issuance of such prescription;
- (15) engaging in any act, acting in concert with another, or engaging in any conspiracy resulting in a restraint of trade, coercion, or a monopoly in the practice of pharmacy;
- (16) sharing or offering to share with a practitioner compensation received from an individual provided pharmacy services by a pharmacist;
- (17) obstructing a board employee in the lawful performance of his or her duties of enforcing the Act;
- (18) engaging in conduct that subverts or attempts to subvert any examination or examination process required for a license to practice pharmacy. Conduct that subverts or attempts to subvert the pharmacist licensing examination process includes, but is not limited to:
 - (A) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the board or questions contained in a question pool of any examination administered by the board;
 - (B) copying or attempting to copy another candidate's answers to any questions on any examination required for a license to practice pharmacy;
 - (C) obtaining or attempting to obtain confidential examination materials compiled by testing services or the board [Board];
 - (D) impersonating or acting as a proxy for another in any examination required for a license to practice pharmacy;
 - (E) requesting or allowing another to impersonate or act as a proxy in any examination required for a license to practice pharmacy; or

(F) violating or attempting to violate the security of examination materials or the examination process in any manner;

(19) violating the provisions of an agreed board order or board order;

(20) dispensing a prescription drug while not acting in the usual course of professional pharmacy practice;

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

(22) using abusive, intimidating, or threatening behavior toward a board member or employee during the performance of such member's or employee's lawful duties;

(23) failing to establish or maintain effective controls against the diversion or loss of controlled substances or dangerous drugs, loss of controlled substance or dangerous drug records, or failing to ensure that controlled substances or dangerous drugs are dispensed in compliance with state and federal laws or rules, by a pharmacist who is:

(A) a pharmacist-in-charge of a pharmacy;

(B) a sole proprietor or individual owner of a pharmacy;

(C) a partner in the ownership of a pharmacy; or

(D) a managing officer of a corporation, association, or joint-stock company owning a pharmacy. A pharmacist, as set out in subparagraphs (B) - (D) of this paragraph, is equally responsible with an individual designated as pharmacist-in-charge of such pharmacy to ensure that employee pharmacists and the pharmacy are in compliance with all state and federal laws or rules relating to controlled substances or dangerous drugs;

(24) failing to correct the issues identified in a warning notice by the specified time; [respond within the time specified on a warning notice to such warning notice issued as a result of a compliance inspection;]

[(25) responding to a warning notice as a result of a compliance inspection in a manner that is false or misleading;]

(25) [(26)] being the subject of civil fines imposed by a federal or state court as a result of violating the Controlled Substances Act or the Dangerous Drug Act;

(26) [(27)] selling, purchasing, or trading or offering to sell, purchase, or trade prescription drug samples; provided, however, this paragraph does not apply to:

(A) prescription drugs provided by a manufacturer as starter prescriptions or as replacement for such manufacturer's outdated drugs;

(B) prescription drugs provided by a manufacturer in replacement for such manufacturer's drugs that were dispensed pursuant to written starter prescriptions; or

(C) prescription drug samples possessed by a pharmacy of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost and if:

(i) the samples are possessed in compliance with the Prescription Drug Marketing Act of 1987;

(ii) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3), or by a city, state or county government; and

(iii) the samples are for dispensing or provision at no charge to patients of such health care entity.

(27) [(28)] selling, purchasing, or trading or offering to sell, purchase, or trade prescription drugs:

(A) sold for export use only;

(B) purchased by a public or private hospital or other health care entity; or

(C) donated or supplied at a reduced price to a charitable organization described in the Internal Revenue Code of 1986, §501(c)(3);

(D) provided that subparagraphs (A) - (C) of this paragraph do not apply to:

(i) the purchase or other acquisition by a hospital or other health care entity which is a member of a group purchasing organization or from other hospitals or health care entities which are members of such organization;

(ii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by an organization described in subparagraph (C) of this paragraph to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iii) the sale, purchase or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities which are under common control;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons including the transfer of a drug between pharmacies to alleviate temporary shortages of the drug arising from delays in or interruptions of regular distribution schedules; or

(v) the dispensing of a prescription drug pursuant to a valid prescription drug order to the extent otherwise permitted by law;

(28) [(29)] selling, purchasing, or trading, or offering to sell, purchase, or trade [øf]:

(A) misbranded prescription drugs; or

(B) prescription drugs beyond the manufacturer's expiration date;

(29) [(30)] failing to repay a guaranteed student loan, as provided in [the] Texas Education Code, §57.491;

(30) [(31)] failing to respond and to provide all requested records within the time specified in an audit of continuing education records under §295.8 of this title (relating to Continuing Education Requirements); or

(31) [(32)] allowing an individual whose license to practice pharmacy, either as a pharmacist or a pharmacist-intern, or a pharmacy technician/trainee whose registration has been disciplined by the board, resulting in the license or registration being revoked, canceled, retired, surrendered, denied or suspended, to have access to prescription drugs in a pharmacy.

(b) For the purposes of the Act, §565.001(a)(3), the term "gross immorality" shall include, but not be limited to:

(1) conduct which is willful, flagrant, and shameless, and which shows a moral indifference to standards of the community;

(2) engaging in an act which is a felony;

(3) engaging in an act that constitutes sexually deviant behavior; or

(4) being required to register with the Department of Public Safety as a sex offender under Chapter 62, Code of Criminal Procedure.

(c) For the purposes of the Act, §565.001(a)(5), the terms "fraud," "deceit," or "misrepresentation" in the practice of pharmacy or in seeking a license to act as a pharmacist shall be defined as follows.

(1) "Fraud" means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another.

(2) "Deceit" means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another.

(3) "Misrepresentation" means a manifestation by words or other conduct which is a false representation of a matter of fact.

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 March 25, 2019.

TRD-201900878

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-8010



CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.4

The Texas State Board of Pharmacy proposes amendments to §283.4, concerning Internship Requirements. The amendments, if adopted, update the pharmacist-intern requirements to reflect the Board's new procedure of issuing electronic pharmacist-intern documentation.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be some fiscal implications for state or local government as a result of enforcing or administering the rules in the form of cost savings for the agency. Ms. Benz has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments will be a more efficient and less costly process for providing pharmacist-intern documentation. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

(1) The proposed rules do not create or eliminate a government program;

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

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

(4) The proposed rules do require a decrease in fees paid to the agency;

(5) The proposed rules do not create a new regulation;

(6) The proposed rules do not limit or expand an existing regulation;

(7) The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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.

§283.4. Internship Requirements.

(a) Goals and competency objectives of internship.

(1) The goal of internship is for the pharmacist-intern to attain the knowledge, skills, and abilities to safely, efficiently, and effectively provide pharmacist-delivered patient care to a diverse patient population and practice pharmacy under the laws and regulations of the State of Texas.

(2) The following competency objectives are necessary to accomplish the goal of internship in paragraph (1) of this subsection.

(A) Provides drug products. The pharmacist-intern shall demonstrate competence in determining the appropriateness of prescription drug orders and medication orders; evaluating and selecting products; and assuring the accuracy of the product/prescription dispensing process.

(B) Communicates with patients and/or patients' agents about prescription drugs. The pharmacist-intern shall demonstrate competence in interviewing and counseling patients, and/or the patients' agents, on drug usage, dosage, packaging, routes of administration, intended drug use, and storage; discussing drug cautions, adverse effects, and patient conditions; explaining policies on fees and services; relating to patients in a professional manner; and interacting to confirm patient understanding.

(C) Communicates with patients and/or patients' agents about nonprescription products, devices, dietary supplements, diet, nutrition, traditional nondrug therapies, complementary and alternative therapies, and diagnostic aids. The pharmacist-intern shall demonstrate competence in interviewing and counseling patients and/or patients' agents on conditions, intended drug use, and adverse effects; assisting in and recommending drug selection; triaging and assessing the need for treatment or referral, including referral for a patient seeking pharmacist-guided self-care; providing information on medical/surgi-

cal devices and home diagnostic products; and providing poison control treatment information and referral.

(D) Communicates with healthcare professionals and patients and/or patients' agents. The pharmacist-intern shall demonstrate competence in obtaining and providing accurate and concise information in a professional manner and using appropriate oral, written, and nonverbal language.

(E) Practices as a member of the patient's interdisciplinary healthcare team. The pharmacist-intern shall demonstrate competence in collaborating with physicians, other healthcare professionals, patients, and/or patients' agents to formulate a therapeutic plan. The pharmacist-intern shall demonstrate competence in establishing and interpreting data-bases, identifying drug-related problems and recommending appropriate pharmacotherapy specific to patient needs, monitoring and evaluating patient outcomes, and devising follow-up plans.

(F) Maintains professional-ethical standards. The pharmacist-intern is required to comply with laws and regulations pertaining to pharmacy practice; to apply professional judgment; to exhibit reliability and credibility in dealing with others; to deal professionally and ethically with colleagues and patients; to demonstrate sensitivity and empathy for patients/care givers; and to maintain confidentiality.

(G) Compounds. The pharmacist-intern shall demonstrate competence in using acceptable professional procedures; selecting appropriate equipment and containers; appropriately preparing compounded non-sterile and sterile preparations; and documenting calculations and procedures. Pharmacist-interns engaged in compounding non-sterile preparations shall meet the training requirements for pharmacists specified in §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations). Pharmacist-interns engaged in compounding sterile preparations shall meet the training requirements for pharmacists specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(H) Retrieves and evaluates drug information. The pharmacist-intern shall demonstrate competence in retrieving, evaluating, managing, and using the best available clinical and scientific publications for answering a drug-related request in a timely fashion and assessing, evaluating, and applying evidence based information to promote optimal health care. The pharmacist-intern shall perform investigations on relevant topics in order to promote inquiry and problem-solving with dissemination of findings to the healthcare community and/or the public.

(I) Manages general pharmacy operations. The pharmacist-intern shall develop a general understanding of planning, personnel and fiscal management, leadership skills, and policy development. The pharmacist-intern shall have an understanding of drug security, storage and control procedures and the regulatory requirements associated with these procedures, and maintaining quality assurance and performance improvement. The pharmacist-intern shall observe and document discrepancies and irregularities, keep accurate records and document actions. The pharmacist-intern shall attend meetings requiring pharmacy representation.

(J) Participates in public health, community service or professional activities. The pharmacist-intern shall develop basic knowledge and skills needed to become an effective healthcare educator and a responsible participant in civic and professional organizations.

(K) Demonstrates scientific inquiry. The pharmacist-intern shall develop skills to expand and/or refine knowledge in the areas of pharmaceutical and medical sciences or pharmaceutical services. This may include data analysis of scientific, clinical, sociologi-

cal, and/or economic impacts of pharmaceuticals (including investigational drugs), pharmaceutical care, and patient behaviors, with dissemination of findings to the scientific community and/or the public.

(b) Hours requirement.

(1) The board requires 1,500 hours of internship for licensure. These hours may be obtained through one or more of the following methods:

(A) in a board approved student internship program, as specified in subsection (c) of this section;

(B) in a board-approved extended-internship program as specified in subsection (d) of this section; and/or

(C) graduation from a college/school of pharmacy after July 1, 2007. Persons graduating from such programs shall be credited 1,500 hours or the number of hours actually obtained and reported by the college; and/or

(D) internship hours approved and certified to the board by another state board of pharmacy.

(2) Pharmacist-interns participating in an internship may be credited no more than 50 hours per week of internship experience.

(3) Internship hours may be used for the purpose of licensure for no longer than two years from the date the internship is completed.

(c) College-/School-Based Internship Programs.

(1) Internship experience acquired by student-interns.

(A) An individual may be designated a student-intern provided he/she:

(i) submits an application to the board that includes the following information:

(I) name;

(II) addresses, phone numbers, date of birth, and social security number;

(III) college of pharmacy and expected graduation date; and

(IV) any other information requested on the application.

(ii) is enrolled in the professional sequence of a college/school of pharmacy;

(iii) has successfully completed the first professional year and obtained a minimum of 30 credit hours of work towards a professional degree in pharmacy; and

(iv) has met all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(B) The terms of the student internship shall be as follows.

(i) The student internship shall be gained concurrent with college attendance, which may include:

(I) partial semester breaks such as spring breaks;

(II) between semester breaks; and

(III) whole semester breaks provided the student-intern attended the college/school in the immediate preceding

semester and is scheduled with the college/school to attend in the immediate subsequent semester.

(ii) The student internship shall be obtained in pharmacies licensed by the board, federal government pharmacies, or in a board-approved program.

(iii) The student internship shall be in the presence of and under the supervision of a healthcare professional preceptor or a pharmacist preceptor.

(C) None of the internship hours acquired outside of a school-based program may be substituted for any of the hours required in a college/school of pharmacy internship program.

(2) Expiration date for student-intern designation.

(A) The student-internship expires:

(i) if the student-intern voluntarily or involuntarily ceases enrollment, including suspension, in a college/school of pharmacy;

(ii) the student-intern fails either the NAPLEX or Texas Pharmacy Jurisprudence Examinations specified in this section; or

(iii) the student-intern fails to take either the NAPLEX or Texas Pharmacy Jurisprudence Examinations or both within six calendar months after graduation.

(B) The executive director of the board, in his/her discretion may extend the term of the student internship if administration of the NAPLEX or Texas Pharmacy Jurisprudence Examinations is suspended or delayed.

(3) Texas colleges/schools of pharmacy internship programs.

(A) Intern-trainees and student-interns completing a board-approved Texas college/school-based structured internship shall be credited the number of hours actually obtained and reported by the college. No credit shall be awarded for didactic experience.

(B) No more than 600 hours of the required 1,500 hours may be obtained under a healthcare professional preceptor except when a pharmacist-intern is working in a federal government pharmacy.

(C) Individuals enrolled in the professional sequence of a Texas college/school of pharmacy may be designated as a intern-trainee provided he/she:

(i) submits an application to the board that includes the following information:

(I) name;

(II) addresses, phone numbers, date of birth, and social security number;

(III) college of pharmacy and expected graduation date; and

(IV) any other information requested on the application.

(ii) is enrolled in the professional sequence of a college/school of pharmacy; and

(iii) has met all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs. Such internship shall remain in effect during the time the intern-trainee is enrolled in the first year of the professional sequence and shall expire

upon completion of the first year of the professional sequence or upon separation from the professional sequence.

(d) Extended-internship program.

(1) A person may be designated an extended-intern provided he/she has met one of the following requirements:

(A) passed NAPLEX and the Texas Pharmacy Jurisprudence Examinations but lacks the required number of internship hours for licensure;

(B) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within six calendar months after graduation and has:

(i) graduated and received a professional degree from a college/school of pharmacy; or

(ii) completed all of the requirements for graduation and receipt of a professional degree from a college/school of pharmacy;

(C) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within six calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission;

(D) applied to the board for re-issuance of a pharmacist license which has expired for more than two years but less than ten years and has successfully passed the Texas Pharmacy Jurisprudence Examination, but lacks the required number of hours of internship or continuing education required for licensure;

(E) is a resident in a residency program accredited by the American Society of Health-System Pharmacists in the state of Texas; or

(F) been ordered by the Board to complete an internship.

(2) In addition to meeting one of the requirements in paragraph (1) of this subsection, an applicant for an extended-internship must:

(A) submit an application to the board that includes the following information:

(i) name;

(ii) addresses, phone numbers, date of birth, and social security number;

(iii) any other information requested on the application; and

(B) meet all requirements necessary for the board to access the criminal history records information, including submitting fingerprint information and being responsible for all associated costs.

(3) The terms of the extended-internship shall be as follows.

(A) The extended-internship shall be board-approved and gained in a pharmacy licensed by the board, or a federal government pharmacy participating in a board-approved internship program.

(B) The extended-internship shall be in the presence of and under the direct supervision of a pharmacist preceptor.

(4) The extended internship remains in effect for two years. However, the internship expires immediately upon:

(A) the failure of the extended-intern to take the NAPLEX and Texas Pharmacy Jurisprudence Examinations within six calendar months after graduation or FPGEC certification;

(B) the failure of the extended-intern to pass the NAPLEX and Texas Pharmacy Jurisprudence Examinations specified in this section;

- (C) upon termination of the residency program; or
- (D) obtaining a Texas pharmacist license.

(5) The executive director of the board, in his/her discretion may extend the term of the extended internship if administration of the NAPLEX and/or Texas Pharmacy Jurisprudence Examinations is suspended or delayed.

(6) An applicant for licensure who has completed less than 500 hours of internship at the time of application shall complete the remainder of the 1,500 hours of internship and have the preceptor certify that the applicant has met the objectives listed in subsection (a) of this section.

(e) Pharmacist-intern identification.

~~[(1) The board shall provide the pharmacist-intern written documentation of designation as a pharmacist-intern. This written documentation serves as identification and authorization to perform the duties of a pharmacist-intern as described in §283.5 of this title (relating to Pharmacist-Intern Duties).]~~

~~(1) [(2)] Pharmacist-interns shall keep [this written] documentation of designation as a pharmacist-intern with them at all times they are serving as a pharmacist-intern and make it available for inspection by board agents.~~

~~(2) [(3)] All pharmacist-interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist-intern.~~

(f) Change of address and/or name.

(1) Change of address. A pharmacist-intern shall notify the board electronically or in writing within 10 days of a change of address, giving the old and new address.

(2) Change of name. A pharmacist-intern shall notify the board in writing within 10 days of a change of name by:

(A) sending a copy of the official document reflecting the name change (e.g., marriage certificate, divorce decree, etc.);

(B) returning the current pharmacist-intern certificate which reflects the previous name; and

(C) paying a fee of \$20.

~~[(g) Duplicate or amended certificate. The fee for issuance of a duplicate or amended pharmacist-intern registration certificate shall be \$20.]~~

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 March 25, 2019.

TRD-201900880

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-8010



22 TAC §283.6

The Texas State Board of Pharmacy proposes amendments to §283.6, concerning Preceptor Requirements and Ratio of Preceptors to Pharmacist-Interns. The amendments, if adopted, remove the requirement for a pharmacist preceptor to publicly display the preceptor certificate with his/her pharmacy license and correct grammatical and reference errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules. Ms. Benz has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding display requirements as §562.103 of the Texas Pharmacy Act only allows for the pharmacist-in-charge's pharmacist license to be publicly displayed. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

(1) The proposed rules do not create or eliminate a government program;

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

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

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

(5) The proposed rules do not create a new regulation;

(6) The proposed rules do limit an existing regulation by a removing a requirement to be consistent with state law;

(7) The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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.

§283.6. *Preceptor Requirements and Ratio of Preceptors to Pharmacist-Interns.*

(a) Preceptor requirements.

(1) Preceptors shall be:

(A) a pharmacist whose license to practice pharmacy in Texas is current and not on inactive status with the board; or

(B) a healthcare professional preceptor.

~~{(2) A pharmacist preceptor shall publicly display the pharmacist preceptor certificate with his/her license to practice pharmacy and the license renewal certificate.}~~

(2) [(3)] To be recognized as a pharmacist preceptor, a pharmacist must:

(A) have at least:

(i) one year of experience as a licensed pharmacist; or

(ii) six months of residency training if the pharmacy resident is in a program accredited by the American Society of Health-System Pharmacists;

(B) have completed:

(i) for initial certification, three hours of pharmacist preceptor training provided by an ACPE approved provider within the previous two years. Such training shall be:

(I) developed by a Texas college/school of pharmacy; or

(II) approved by:

(-a-) a committee comprised of the Texas college/schools of pharmacy; or

(-b-) the board; or

(ii) to continue certification, three hours of pharmacist preceptor training provided by an ACPE approved provider within the pharmacist's current license renewal period. Such training shall be:

(I) developed by a Texas college/school of pharmacy; or

(II) approved by:

(-a-) a committee comprised of the Texas college/schools of pharmacy; or

(-b-) the board; and

(C) meet the requirements of subsection (c) of this section.

(b) Ratio of preceptors to pharmacist-interns.

(1) A preceptor may supervise only one pharmacist-intern at any given time (1:1 ratio) except as provided in paragraph (2) of this subsection.

(2) The following is applicable to Texas college/school of pharmacy internship programs [program] only.

(A) Supervision. Supervision of a pharmacist-intern shall be:

(i) direct supervision when the student-intern or intern-trainee is engaged in functions associated with the preparation and delivery of prescription or medication drug orders; and

(ii) general supervision when the student-intern or intern-trainee is engaged in functions not associated with the preparation and delivery of prescription or medication drug orders.

(B) Exceptions to the 1:1 ratio. There is no ratio requirement for preceptors supervising intern-trainees and student-interns as a part of a Texas college/school of pharmacy program.

(c) No pharmacist may serve as a pharmacist preceptor if his or her license to practice pharmacy has been the subject of an order of the board imposing any penalty set out in §565.051 of the Act [~~§565.051~~] during the period he or she is serving as a pharmacist preceptor or within the three-year period immediately preceding application for approval as a pharmacist preceptor. Provided, however, a pharmacist who has been the subject of such an order of the board may petition the board, in writing, for approval to act as a pharmacist preceptor. The board may consider the following items in approving a pharmacist's petition to act as a pharmacist preceptor:

(1) the type and gravity of the offense for which the pharmacist's license was disciplined;

(2) the length of time since the action that caused the order;

(3) the length of time the pharmacist has previously served as a preceptor;

(4) the availability of other preceptors in the area;

(5) the reason(s) the pharmacist believes he/she should serve as a preceptor;

(6) a letter of recommendation from a Texas college/school of pharmacy if the pharmacist will be serving as a pharmacist preceptor for a Texas college/school of pharmacy; and

(7) any other factor presented by the pharmacist demonstrating good cause why the pharmacist should be allowed to act as a pharmacist preceptor.

(d) The fee for issuance of a duplicate or amended preceptor certificate shall be \$20.

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

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.17

The Texas State Board of Pharmacy proposes amendments to §291.17, concerning Inventory Requirements. The amendments, if adopted, clarify that the annual inventory of a Class C or Class C-S pharmacy shall include a physical count of all controlled substances located in the pharmacy and all controlled substances located in other departments of the institution.

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

provide clear requirements for annual inventories in Class C and Class C-S pharmacies. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

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

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

§291.17. *Inventory Requirements.*

(a) General requirements.

- (1) The pharmacist-in-charge shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person(s).
- (2) The inventory shall be maintained in a written, typewritten, or printed form. An inventory taken by use of an oral recording device must be promptly transcribed.
- (3) The inventory shall be kept in the pharmacy and shall be available for inspection for two years.
- (4) The inventory shall be filed separately from all other records.
- (5) The inventory shall be in a written, typewritten, or printed form and include all stocks of all controlled substances on hand on the date of the inventory (including any which are out-of-date).

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

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

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

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

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

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

(b) Initial inventory.

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

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

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

(c) Annual inventory.

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

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

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

(d) Change of ownership.

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

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

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

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

(e) Closed pharmacies.

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

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

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

(1) Perpetual inventory.

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

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

(2) Annual inventory. The inventory of the Class C or Class C-S pharmacy shall be maintained in the pharmacy. The inventory shall include all controlled substances located in the pharmacy and, if applicable, all controlled substances located in other departments within the institution. [; if] If an inventory is conducted in other departments within the institution, the inventory of the pharmacy shall be listed separately, as follows:

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

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the 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 March 25, 2019.

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-8010



SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.32

The Texas State Board of Pharmacy proposes amendments to §291.32, concerning Personnel. The amendments, if adopted, update the requirements for pharmacist electronic supervision of and electronic verification of data entry by pharmacy technicians and pharmacy technician trainees to remove the requirement that a pharmacist and the pharmacy technicians or pharmacy technician trainees be on site in the Class A pharmacy.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide Class A pharmacies more flexibility in employment, and to provide licensees more employment opportunities, by allowing data entry and data entry verification to be performed remotely. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

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

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

- (4) The proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) The proposed rule does not create a new regulation;
- (6) The proposed rule does limit an existing regulation;
- (7) The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed rule may positively affect this state's economy.

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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.

§291.32. *Personnel.*

- (a) - (b) (No change.)
- (c) Pharmacists.
 - (1) General.

(A) The pharmacist-in-charge shall be assisted by sufficient number of additional licensed pharmacists as may be required to operate the Class A pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(B) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities in ordering, dispensing, and accounting for prescription drugs.

(C) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and pharmacy technician trainees and for designating and delegating duties, other than those listed in paragraph (2) of this subsection, to pharmacy technicians and pharmacy technician trainees. Each pharmacist shall be responsible for any delegated act performed by pharmacy technicians and pharmacy technician trainees under his or her supervision.

(D) Pharmacists shall directly supervise pharmacy technicians and pharmacy technician trainees who are entering prescription data into the pharmacy's data processing system by one of the following methods.

(i) Physically present supervision. A pharmacist shall be physically present to directly supervise a pharmacy technician or pharmacy technician trainee who is entering prescription data into the data processing system. Each prescription entered into the data processing system shall be verified at the time of data entry. If the pharmacist is not physically present due to a temporary absence as specified in §291.33(b)(3) of this title (relating to Operational Standards), on return the pharmacist must:

- (I) conduct a drug regimen review for the prescriptions data entered during this time period as specified in §291.33(c)(2) [§291.33(e) (2)] of this title; and
- (II) verify that prescription data entered during this time period was entered accurately.

(ii) Electronic supervision. A pharmacist may electronically supervise a pharmacy technician or pharmacy technician trainee who is entering prescription data into the data processing system provided the pharmacist:

(I) has the ability to immediately communicate directly with the technician/trainee;

~~[(II) is on-site, in the pharmacy where the technician/trainee is located;]~~

(II) has immediate access to any original document containing prescription information or other information related to the dispensing of the prescription. Such access may be through imaging technology provided the pharmacist has the ability to review the original, hardcopy documents if needed for clarification; and

(III) verifies the accuracy of the data entered information prior to the release of the information to the system for storage and/or generation of the prescription label.

(iii) Electronic verification of data entry by pharmacy technicians or pharmacy technician trainees. A pharmacist may electronically verify the data entry of prescription information into a data processing system provided:

(I) the pharmacist has the ability to immediately communicate directly with the technician/trainee;

~~[(II) a pharmacist is on-site in the pharmacy where the pharmacy technicians/trainees are located;]~~

(II) the pharmacist electronically conducting the verification is either a:

- (-a-) Texas licensed pharmacist; or
- (-b-) pharmacist employed by a Class E pharmacy that:

(-1-) has the same owner as the Class A pharmacy where the pharmacy technicians/trainees are located; or

(-2-) has entered into a written contract or agreement with the Class A pharmacy, which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations;

(III) the pharmacy establishes controls to protect the privacy and security of confidential records; and

(IV) the pharmacy keeps permanent records of prescriptions electronically verified for a period of two years.

(E) All pharmacists, while on duty, shall be responsible for the legal operation of the pharmacy and for complying with all state and federal laws or rules governing the practice of pharmacy.

(F) A dispensing pharmacist shall be responsible for and ensure that the drug is dispensed and delivered safely and accurately as prescribed, unless the pharmacy's data processing system can record the identity of each pharmacist involved in a specific portion of the dispensing processing. If the system can track the identity of each pharmacist involved in the dispensing process, each pharmacist involved in the dispensing process shall be responsible for and ensure that the portion of the process the pharmacist is performing results in the safe and accurate dispensing and delivery of the drug as prescribed. The dispensing process shall include, but not be limited to, drug regimen review and verification of accurate prescription data entry, including prescriptions placed on hold, packaging, preparation, compounding, transferring, labeling, and performance of the final check

of the dispensed prescription. An intern has the same responsibilities described in this subparagraph as a pharmacist but must perform his or her duties under the supervision of a pharmacist.

(2) Duties. Duties which may only be performed by a pharmacist are as follows:

(A) receiving oral prescription drug orders and reducing these orders to writing, either manually or electronically;

(B) interpreting prescription drug orders;

(C) selecting drug products;

(D) performing the final check of the dispensed prescription before delivery to the patient to ensure that the prescription has been dispensed accurately as prescribed;

(E) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant, as specified in §291.33(c) of this title;

(F) communicating to the patient or the patient's agent on his or her request information concerning any prescription drugs dispensed to the patient by the pharmacy;

(G) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records;

(H) interpreting patient medication records and performing drug regimen reviews;

(I) performing a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with the Medical Practice Act;

(J) verifying that controlled substances listed on invoices are received by clearly recording his/her initials and date of receipt of the controlled substances; and

(K) transferring or receiving a transfer of original prescription information on behalf of a patient.

(3) Special requirements for compounding. All pharmacists engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(d) - (e) (No change.)

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

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



22 TAC §291.34

The Texas State Board of Pharmacy proposes amendments to §291.34, concerning Records. The amendments, if adopted, remove an outdated reference to the Department of Public Safety

as one of the agencies to which reports of theft or loss of controlled substances are made, remove an outdated reference to a Schedule V nonprescription register book, and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules. Ms. Benz has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear records requirements without outdated references. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

(1) The proposed rules do not create or eliminate a government program;

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

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

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

(5) The proposed rules do not create a new regulation;

(6) The proposed rules do limit an existing regulation by removing outdated requirements;

(7) The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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.

§291.34. *Records.*

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

(i) Other records. Other records to be maintained by a pharmacy:

(1) a log of the initials or identification codes that will identify each pharmacist, pharmacy technician, and pharmacy technician trainee[.] who is involved in the dispensing process, in the pharmacy's

data processing system^[5] (the initials or identification code shall be unique to ensure that each individual can be identified, i.e., identical initials or identification codes shall not be used). Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

(2) ~~copy~~ ^[Copy] 3 of DEA order forms ~~[form]~~ (DEA 222) that ~~have~~ ^[has] been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents² and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS)², the original signed order and all linked records for that order;

(3) a copy of the power of attorney to sign DEA 222 order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

~~[(8) the Schedule V nonprescription register book;]~~

~~(8) [(9)]~~ records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

~~(9) [(10)]~~ a copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA^[2] ~~Department of Public Safety,~~ and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster that may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(j) - (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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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §291.55

The Texas State Board of Pharmacy proposes amendments to §291.55, concerning Records. The amendments, if adopted, remove an outdated reference to the Department of Public Safety as one of the agencies to which reports of theft or loss of controlled substances are made and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear records requirements without outdated references. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

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

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

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

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

(6) The proposed rule does limit an existing regulation by removing outdated requirements;

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

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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.

§291.55. *Records.*

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under this section shall be:

(A) kept by the 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 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 board [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, other than original prescription drug orders, listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, "readily retrievable" means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard copy [~~hard-copy~~] form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon [the] request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility. Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any radioactive prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a radioactive prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(2) Verbal radioactive prescription drug orders.

(A) Only an authorized nuclear pharmacist or a pharmacist-intern under the direct supervision of an authorized nuclear pharmacist may receive from a practitioner or a practitioner's designated agent:

(i) a verbal therapeutic prescription drug order; or

(ii) a verbal diagnostic prescription drug order in instances where patient specificity is required for patient safety (e.g., radiolabeled blood products, radiolabeled antibodies).

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense a verbal radioactive prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or

the United Mexican States unless the practitioner is also licensed in Texas.

(3) Radioactive prescription drug orders issued by practitioners in another state.

(A) Dangerous drug prescription orders. A pharmacist may dispense a radioactive prescription drug order for dangerous drugs issued by practitioners in a state other than Texas in the same manner as radioactive prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(B) Controlled substance prescription drug orders. A pharmacist may dispense radioactive prescription drug orders for controlled substances in Schedule III, IV, or V issued by a practitioner in another state provided:

(i) the radioactive prescription drug order is written, oral, or telephonically or electronically communicated prescription as allowed by the DEA issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state; and

(ii) the radioactive prescription drug order is not dispensed more than six months from the initial date of issuance.

(4) Radioactive prescription drug orders issued by practitioners in the United Mexican States or the Dominion of Canada.

(A) Controlled substance prescription drug orders. A pharmacist may not dispense a radioactive prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States.

(B) Dangerous drug prescription drug orders. A pharmacist may dispense a radioactive prescription drug order for a dangerous drug issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided the radioactive prescription drug order is an original written prescription.

(C) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an [a] official prescription form as required by the Texas Controlled Substances Act, §481.075.

(5) Electronic radioactive prescription drug orders. For the purpose of this paragraph, electronic radioactive prescription drug orders shall be considered the same as verbal radioactive prescription drug orders.

(A) An electronic radioactive prescription drug order may be transmitted by a practitioner or a practitioner's designated agent:

(i) directly to a pharmacy; or

(ii) through the use of a data communication device provided:

(I) the confidential prescription information is not altered during transmission; and

(II) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit

prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense an electronic radioactive prescription drug order for a:

(i) Schedule II controlled substance except as authorized for faxed prescriptions in §481.074, Health and Safety Code; or

(ii) dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(6) Original prescription drug order records.

(A) Original prescriptions shall be maintained and readily retrievable by the pharmacy and remain accessible for a period of two years from the date of filling.

(B) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required.

(C) Original prescriptions shall be maintained in one of the following formats:

(i) in three separate files as follows:

(I) prescriptions for controlled substances listed in Schedule II;

(II) prescriptions for controlled substances listed in Schedules [Schedule] III - V; and

(III) prescriptions for dangerous drugs and non-prescription drugs; or

(ii) within a patient medication record system provided that original prescriptions for controlled substances are maintained separate from original prescriptions for noncontrolled substances and prescriptions for Schedule II controlled substances are maintained separate from all other original prescriptions.

(D) Original prescription records other than prescriptions for Schedule II controlled substances may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., a digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable: [-]

(i) The original prescription records must be maintained and readily retrievable as specified in subparagraph (C) of this paragraph.

(ii) The pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(7) Prescription drug order information.

(A) All original radioactive prescription drug orders shall bear:

(i) the name of the patient, if applicable at the time of the order;

(ii) the name of the institution;

(iii) the name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) the name of the radiopharmaceutical;

(v) the amount of radioactive material contained in millicuries (mCi), microcuries (uCi), or bequerels (Bq) and the corresponding time that applies to this activity, if different than the requested calibration date and time;

(vi) the date and time of calibration; and

(vii) the date of issuance.

(B) At the time of dispensing, a pharmacist is responsible for the addition of the following information to the original prescription:

(i) the unique identification number of the prescription drug order;

(ii) the initials or identification code of the person who compounded the sterile radiopharmaceutical and the pharmacist who checked and released the product unless maintained in a readily retrievable format;

(iii) the name, quantity, lot number, and expiration date of each product used in compounding the sterile radiopharmaceutical; and

(iv) the date of dispensing, if different from the date of issuance.

(8) Refills. A radioactive prescription drug order must be filled from an original prescription which may not be refilled.

(c) Policy and procedure manual.

(1) All nuclear pharmacies shall maintain a policy and procedure manual. The nuclear pharmacy policy and procedure manual is a compilation of written policy and procedure statements.

(2) A technical operations manual governing all nuclear pharmacy functions shall be prepared. It shall be continually revised to reflect changes in techniques, organizations, etc. All pharmacy personnel shall be familiar with the contents of the manual.

(3) The nuclear pharmacy policies and procedures manual shall be prepared by the pharmacist-in-charge with input from the affected personnel and from other involved staff and committees to govern procurement, preparation, distribution, storage, disposal, and control of all drugs used and the need for policies and procedures relative to procurement of multisource items, inventory, investigational drugs, and new drug applications.

(d) Other records. Other records to be maintained by a pharmacy:

(1) a permanent log of the initials or identification codes which identifies [will identify] each dispensing pharmacist by name (the initials or identification codes [eode] shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes shall not be used);

(2) copy 3 of DEA order forms [form] (DEA 222) which have [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 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);

(7) ~~hard copy~~ [hard-copy] reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(9) 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 the diagnosis or treatment of injury, illness, and disease.

(e) 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 DEA [the Drug Enforcement Administration] as required by the Code of Federal Regulations, Title 21, §1304.04(a), and submits a copy of this written notification to the board [Texas State Board of Pharmacy]. Unless the registrant is informed by the divisional director of DEA [the Drug Enforcement Administration] that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph.

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, 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 an authorized agent of the board [a board agent] or any other authorized official.

(5) Ownership of pharmacy records. For purposes of these sections, a pharmacy licensed under the Act is the only entity which may legally own and maintain prescription drug records.

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

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

TRD-201900890

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-8010



SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.75

The Texas State Board of Pharmacy proposes amendments to §291.75, concerning Records. The amendments, if adopted, remove an outdated reference to the Department of Public Safety as one of the agencies to which reports of theft or loss of controlled substances are made and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear records requirements without outdated references. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

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

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

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

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

(6) The proposed rule does not limit an existing regulation by removing outdated requirements;

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

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin,

Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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 board [~~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, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing 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 [Records]), 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; and [-]

(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; and [-]

(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; and [-]

(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 [Board's] requirements, the pharmacy must maintain a manual recordkeeping system.

(B) Requirements for backup [~~baek-up~~] systems. The facility shall maintain a backup [~~baek-up~~] copy of information stored in the data processing system using disk, tape, or other electronic backup [~~baek-up~~] system and update this backup [~~baek-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 board [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; and [-]

(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 identifies [will identify] pharmacy personnel by name. The [(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 forms [form] (DEA 222) which have [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 DEA [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 DEA [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 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 March 25, 2019.

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-8010



22 TAC §291.76

The Texas State Board of Pharmacy proposes amendments to §291.76, concerning Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center. The amendments, if adopted, remove an outdated reference to the Department of Public Safety as one of the agencies to which reports of theft or loss of controlled substances are made and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear records requirements without outdated references. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

- (1) The proposed rule does not create or eliminate a government program;
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;

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

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

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

(6) The proposed rule does not limit an existing regulation by removing outdated references;

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

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701 FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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.

§291.76. *Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center.*

(a) Purpose. The purpose of this section is to provide standards in the conduct, practice activities, and operation of a pharmacy located in a freestanding ambulatory surgical center that is licensed by the Texas Department of State Health Services. Class C pharmacies located in a freestanding ambulatory surgical center shall comply with this section, in lieu of §§291.71 - 291.75 of this title (relating to Purpose; Definitions; Personnel; Operational Standards; and Records).

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

(1) Act--The Texas Pharmacy Act, Occupations Code, Subtitle J, as amended.

(2) Administer--The direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(3) Ambulatory surgical center (ASC)--A freestanding facility that is licensed by the Texas Department of State Health Services that primarily provides surgical services to patients who do not require overnight hospitalization or extensive recovery, convalescent time or observation. The planned total length of stay for an ASC patient shall not exceed 23 hours. Patient stays of greater than 23 hours shall be the result of an unanticipated medical condition and shall occur infrequently. The 23-hour period begins with the induction of anesthesia.

(4) Automated medication supply system--A mechanical system that performs operations or activities relative to the storage and

distribution of medications for administration and which collects, controls, and maintains all transaction information.

(5) Board--The Texas State Board of Pharmacy.

(6) Consultant pharmacist--A pharmacist retained by a facility on a routine basis to consult with the ASC in areas that pertain to the practice of pharmacy.

(7) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, or a drug immediate precursor, or other substance included in Schedules [Schedule] I - V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(8) 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.

(9) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(10) Downtime--Period of time during which a data processing system is not operable.

(11) 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.

(12) Floor stock--Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other ASC department (excluding the pharmacy) for the purpose of administration to a patient of the ASC.

(13) Formulary--List of drugs approved for use in the ASC by an appropriate committee of the ambulatory surgical center.

(14) Hard copy--A physical document that is readable without the use of a special device (i.e., data processing system, computer, etc.).

(15) Investigational new drug--New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the federal Food and Drug Administration.

(16) Medication order--An order from a practitioner or his authorized agent for administration of a drug or device.

(17) Pharmacist-in-charge--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.

(18) Pharmacy--Area or areas in a facility, separate from patient care areas, where drugs are stored, bulk compounded, delivered, compounded, dispensed, and/or distributed to other areas or departments of the ASC, or dispensed to an ultimate user or his or her agent.

(19) Prescription drug--

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(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 order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(20) Prescription drug order--

(A) An order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) An order pursuant to Subtitle B, Chapter 157, Occupations Code.

(21) 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.

(22) Part-time pharmacist--A pharmacist who works less than full-time.

(23) 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.

(24) 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.

(25) Texas Controlled Substances Act--The Texas Controlled Substances Act, [the] Health and Safety Code, Chapter 481, as amended.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each ambulatory surgical center shall have one pharmacist-in-charge who is employed or under contract, at least on a consulting or part-time basis, but may be employed on a full-time basis.

(B) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i) establishing specifications for procurement and storage of all materials, including drugs, chemicals, and biologicals;

(ii) participating in the development of a formulary for the ASC, subject to approval of the appropriate committee of the ASC;

(iii) distributing drugs to be administered to patients pursuant to the practitioner's medication order;

(iv) filling and labeling all containers from which drugs are to be distributed or dispensed;

(v) maintaining and making available a sufficient inventory of antidotes and other emergency drugs, both in the pharmacy

and patient care areas, as well as current antidote information, telephone numbers of regional poison control center and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the ASC;

(vi) maintaining records of all transactions of the ASC pharmacy as may be required by applicable state and federal law, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials;

(vii) participating in those aspects of the ASC's patient care evaluation program which relate to pharmaceutical material utilization and effectiveness;

(viii) participating in teaching and/or research programs in the ASC;

(ix) implementing the policies and decisions of the appropriate committee(s) relating to pharmaceutical services of the ASC;

(x) providing effective and efficient messenger and delivery service to connect the ASC pharmacy with appropriate areas of the ASC on a regular basis throughout the normal workday of the ASC;

(xi) labeling, storing, and distributing investigational new drugs, including maintaining information in the pharmacy and nursing station where such drugs are being administered, concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions, and symptoms of toxicity of investigational new drugs;

(xii) meeting all inspection and other requirements of the Texas Pharmacy Act and this subsection;

(xiii) maintaining records in a data processing system such that the data processing system is in compliance with the requirements for a Class C (institutional) pharmacy located in a free-standing ASC; and

(xiv) ensuring that a pharmacist visits the ASC at least once each calendar week that the facility is open.

(2) Consultant pharmacist.

(A) The consultant pharmacist may be the pharmacist-in-charge.

(B) A written contract shall exist between the ASC and any consultant pharmacist, and a copy of the written contract shall be made available to the board upon request.

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the ASC pharmacy competently, safely, and adequately to meet the needs of the patients of the facility.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in paragraph (1)(B) of this subsection and in ordering, administering, and accounting for pharmaceutical materials.

(iii) All pharmacists shall be responsible for any delegated act performed by pharmacy technicians or pharmacy technician trainees under his or her supervision.

(iv) All pharmacists while on duty shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties of the pharmacist-in-charge and all other pharmacists shall include, but need not be limited to, the following:

(i) receiving and interpreting prescription drug orders and oral medication orders and reducing these orders to writing either manually or electronically;

(ii) selecting prescription drugs and/or devices and/or suppliers; and

(iii) interpreting patient profiles.

(C) Special requirements for compounding non-sterile preparations. All pharmacists engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(4) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties. Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in paragraph (3)(B) of this subsection. Duties may include, but need not be limited to, the following functions, under the direct supervision of a pharmacist:

(i) prepacking and labeling unit and multiple dose packages, provided a pharmacist supervises and conducts a final check and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(ii) preparing, packaging, compounding, or labeling prescription drugs pursuant to medication orders, provided a pharmacist supervises and checks the preparation;

(iii) compounding non-sterile preparations pursuant to medication orders provided the pharmacy technicians or pharmacy technician trainees have completed the training specified in §291.131 of this title;

(iv) bulk compounding, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(v) distributing routine orders for stock supplies to patient care areas;

(vi) entering medication order and drug distribution information into a data processing system, provided judgmental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order or in compliance with the absence of pharmacist requirements contained in subsection (d)(6)(D) and (E) of this section;

(vii) maintaining inventories of drug supplies;

(viii) maintaining pharmacy records; and

(ix) loading drugs into an automated medication supply system. For the purpose of this clause, direct supervision

may be accomplished by physically present supervision or electronic monitoring by a pharmacist.

(C) Procedures.

(i) Pharmacy technicians and pharmacy technician trainees shall handle medication orders in accordance with standard written procedures and guidelines.

(ii) Pharmacy technicians and pharmacy technician trainees shall handle prescription drug orders in the same manner as pharmacy technicians or pharmacy technician trainees working in a Class A pharmacy.

(D) Special requirements for compounding non-sterile preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title.

(5) Owner. The owner of an ASC pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) establishing policies for procurement of prescription drugs and devices and other products dispensed from the ASC pharmacy;

(B) establishing and maintaining effective controls against the theft or diversion of prescription drugs;

(C) if the pharmacy uses an automated medication supply system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(D) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(E) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(6) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows:

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) Operational standards.

(1) Licensing requirements.

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

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

(C) An ASC pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

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

(E) An ASC pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

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

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

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

(I) An ASC pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title.

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

(K) An ASC 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).

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

(2) Environment.

(A) General requirements.

(i) Each ambulatory surgical center shall have a designated work area separate from patient areas, and which shall have space adequate for the size and scope of pharmaceutical services and shall have adequate space and security for the storage of drugs.

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

(B) Special requirements.

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

(ii) The ASC pharmacy shall have a designated area for the storage of poisons and externals separate from drug storage areas.

(C) Security.

(i) The pharmacy and storage areas for prescription drugs and/or devices shall be enclosed and capable of being locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge may enter the pharmacy or have access to storage areas for prescription drugs and/or devices.

(ii) The pharmacist-in-charge shall consult with ASC personnel with respect to security of the drug storage areas, including provisions for adequate safeguards against theft or diversion of dangerous drugs and controlled substances, and to security of records for such drugs.

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

(3) Equipment and supplies. Ambulatory surgical centers supplying drugs for postoperative use shall have the following equipment and supplies:

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

(B) adequate supply of child-resistant, moisture-proof, and light-proof containers; and

(C) adequate supply of prescription labels and other applicable identification labels.

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

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules;

(iv) Federal Controlled Substances Act and rules or official publication describing the requirements of the Federal Controlled Substances Act and rules;

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

(5) Drugs.

(A) Procurement, preparation, and storage.

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

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

(iii) ASC 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).

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

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

(vi) Outdated drugs shall be removed from dispensing stock and shall be quarantined together until such drugs are disposed of.

(B) Formulary.

(i) A formulary may be developed by an appropriate committee of the ASC.

(ii) The pharmacist-in-charge or consultant pharmacist shall be a full voting member of any committee which involves pharmaceutical services.

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

(I) a formulary has been developed;

(II) the formulary has been approved by the medical staff of the ASC;

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

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

(C) Prepackaging and loading drugs into automated medication supply system.

(i) Prepackaging of drugs.

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

(II) The label of 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-) expiration date;
(-d-) quantity of the drug, if quantity is greater than one; and
(-e-) if the drug is distributed to another Class C pharmacy, name of the facility responsible for prepackaging the drug.

(III) Records of prepackaging shall be maintained to show:
(-a-) the name of the drug, strength, and dosage form;

(-b-) facility's lot number;
(-c-) manufacturer or distributor;
(-d-) manufacturer's lot number;
(-e-) expiration date;
(-f-) quantity per prepackaged unit;
(-g-) number of prepackaged units;
(-h-) date packaged;
(-i-) name, initials, or electronic signature of the prepacker;

(-j-) signature or electronic signature of the responsible pharmacist; and
(-k-) if the drug is distributed to another Class C pharmacy, name of the facility receiving the prepackaged drug.

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

(ii) Loading bulk unit of use drugs into automated medication supply systems. Automated medication supply systems may be loaded with bulk unit of use drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist. In order for the pharmacist to electronically monitor, the medication supply system must allow for bar code scanning to verify the loading of drugs, and a record of the loading must be maintained by the system and accessible for electronic review by the pharmacist.

(6) Medication orders.

(A) Drugs may be administered to patients in ASCs only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (5)(B) of this subsection.

(B) Drugs may be distributed only pursuant to the practitioner's medication order.

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

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

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs of a patient may be removed from the ASC pharmacy.

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

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

(I) name of the patient;
(II) name of device or drug, strength, and dosage form;
(III) dose prescribed;
(IV) quantity taken;
(V) time and date; and
(VI) signature or electronic signature of person making withdrawal.

(iv) The medication order in the patient's chart may substitute for such record, provided the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

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

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

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

(iii) The pharmacist shall conduct an audit of the patient's medical record according to the schedule set out in the policy and procedures at a reasonable interval, but such interval must occur at least once in every calendar week that the pharmacy is open.

(7) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable for removing drugs or devices in the absence of a pharmacist.

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

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

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

(i) name of the drug, strength, and dosage form;
(ii) quantity removed;
(iii) location of floor stock;
(iv) date and time; and
(v) signature or electronic signature of person making the withdrawal.

(D) A pharmacist shall verify the withdrawal according to the following schedule.

(i) In facilities with a full-time pharmacist, the withdrawal shall be verified as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(ii) In facilities with a part-time or consultant pharmacist, the withdrawal shall be verified after a reasonable interval, but such interval must occur at least once in every calendar week that the pharmacy is open.

(iii) The medication order in the patient's chart may substitute for the record required in subparagraph (C) of this paragraph, provided the medication order meets all the requirements of subparagraph (C) of this paragraph.

(8) Policies and procedures. Written policies and procedures for a drug distribution system, appropriate for the ambulatory surgical center, shall be developed and implemented by the pharmacist-in-charge with the advice of the appropriate committee. The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

- (A) controlled substances;
- (B) investigational drugs;
- (C) prepackaging and manufacturing;
- (D) medication errors;
- (E) orders of physician or other practitioner;
- (F) floor stocks;
- (G) adverse drug reactions;
- (H) drugs brought into the facility by the patient;
- (I) self-administration;
- (J) emergency drug tray;
- (K) formulary, if applicable;
- (L) drug storage areas;
- (M) drug samples;
- (N) drug product defect reports;
- (O) drug recalls;
- (P) outdated drugs;
- (Q) preparation and distribution of IV admixtures;
- (R) procedures for supplying drugs for postoperative use, if applicable;
- (S) use of automated medication supply systems;
- (T) use of data processing systems; and
- (U) drug regimen review.

(9) Drugs supplied for postoperative use. Drugs supplied to patients for postoperative use shall be supplied according to the following procedures.

(A) Drugs may only be supplied to patients who have been admitted to the ASC.

(B) Drugs may only be supplied in accordance with the system of control and accountability established for drugs supplied from the ambulatory surgical center; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only drugs listed on the approved postoperative drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the medical staff and shall consist of drugs of the nature and type to meet the immediate postoperative needs of the ambulatory surgical center patient.

(D) Drugs may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including name, address, and phone number of the facility, and necessary auxiliary labels) by the pharmacy[;] provided,

however, that topicals and ophthalmics in original manufacturer's containers may be supplied in a quantity exceeding a 72-hour supply.

(E) At the time of delivery of the drug, the practitioner shall complete the label, such that the prescription container bears a label with at least the following information:

- (i) date supplied;
- (ii) name of practitioner;
- (iii) name of patient;
- (iv) directions for use;
- (v) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and
- (vi) unique identification number.

(F) After the drug has been labeled, the practitioner or a licensed nurse under the supervision of the practitioner shall give the appropriately labeled, prepackaged medication to the patient.

(G) A perpetual record of drugs which are supplied from the ASC shall be maintained which includes:

- (i) name, address, and phone number of the facility;
- (ii) date supplied;
- (iii) name of practitioner;
- (iv) name of patient;
- (v) directions for use;
- (vi) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and
- (vii) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall review the records at least once in every calendar week that the pharmacy is open.

(10) Drug regimen review.

(A) A pharmacist shall evaluate medication orders and patient medication records for:

- (i) known allergies;
- (ii) rational therapy--contraindications;
- (iii) reasonable dose and route of administration;
- (iv) reasonable directions for use;
- (v) duplication of therapy;
- (vi) drug-drug interactions;
- (vii) drug-food interactions;
- (viii) drug-disease interactions;
- (ix) adverse drug reactions;
- (x) proper utilization, including overutilization or underutilization; and
- (xi) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(B) A retrospective, random drug regimen review as specified in the pharmacy's policies and procedures shall be conducted on a periodic basis to verify proper usage of drugs not to exceed 31 days between such reviews.

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

(e) Records.

(1) Maintenance of records.

(A) Every inventory or other record required to be kept under the provisions of this section (relating to Class C Pharmacies Located in a Freestanding Ambulatory Surgical Center) shall be:

(i) kept by the 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 other authorized local, state, or federal law enforcement agencies; and

(ii) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board [~~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.

(B) Records of controlled substances listed in Schedule II shall be maintained separately and readily retrievable from all other records of the pharmacy.

(C) 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 subparagraph, "readily retrievable" [~~readily retrievable~~] means that the controlled substances shall be asterisked, redlined [~~red-lined~~], or in some other manner readily identifiable apart from all other items appearing on the record.

(D) Records, except when specifically required to be maintained in original or hard copy [~~hard-copy~~] form, may be maintained in an alternative data retention system, such as a data processing or direct imaging system provided:

(i) the records in the alternative data retention system contain all of the information required on the manual record; and

(ii) 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.

(E) Controlled substance records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(F) An ASC pharmacy shall maintain a perpetual inventory of controlled substances listed in Schedules [~~Schedule~~] II - V which shall be verified for completeness and reconciled at least once in every calendar week that the pharmacy is open.

(G) Distribution records for controlled substances, listed in Schedules Schedule II - V, shall include the following information:

(i) patient's name;

(ii) practitioner's name who ordered [~~order~~] the drug;

(iii) name of drug, dosage form, and strength;

(iv) time and date of administration to patient and quantity administered;

(v) signature or electronic signature of individual administering the controlled substance;

(vi) returns to the pharmacy; and

(vii) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(H) The record required by subparagraph (G) of this paragraph shall be maintained separately from patient records.

(I) A pharmacist shall conduct an audit by randomly comparing the distribution records required by subparagraph (G) with the medication orders in the patient record on a periodic basis to verify proper administration of drugs not to exceed 30 days between such reviews.

(2) Patient records.

(A) Each medication order or set of orders issued together shall bear the following information:

(i) patient name;

(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, defined as an [a] employee or consultant/full or part-time pharmacist of the ASC.

(B) Medication orders shall be maintained with the medication administration record in the medical records of the patient.

(3) General requirements for records maintained in a data processing system.

(A) If an ASC pharmacy's data processing system is not in compliance with the board's requirements, the pharmacy must maintain a manual recordkeeping system.

(B) The facility shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis to assure that data is not lost due to system failure.

(C) 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:

(I) all of the information required on the original document; or

(II) for records of distribution and return for all controlled substances, the same information as required on the audit trail printout as specified in subparagraph (F) of this paragraph. The information on the printout shall be sorted and printed by drug name and list all distributions and returns chronologically.

(D) Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) 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.

(F) The data processing system shall have the capacity to produce a hard copy [~~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.

(G) An audit trail printout for each strength and dosage form of the [~~these~~] drugs distributed during the preceding month shall be produced at least monthly and shall be maintained in a separate file at the facility. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(H) 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 clause 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.

(I) In the event that an ASC pharmacy which uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for online [~~on-line~~] data entry as soon as the system is available for use again.

(4) 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.

(A) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to possess that controlled substance.

(B) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed 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.

(C) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(i) the actual date of distribution;

(ii) the name, strength, and quantity of controlled substances distributed;

(iii) the name, address, and DEA registration number of the distributing pharmacy; and

(iv) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(D) If the distribution is for a Schedule II controlled substance, the following is applicable.

(i) 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.

(ii) 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 DEA [~~the Drug Enforcement Administration~~].

(5) Other records. Other records to be maintained by the pharmacy include:

(A) a log of the initials or identification codes which identifies [~~will identify~~] each pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist 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;

(B) Copy 3 of DEA order forms [~~form~~] (DEA 222), which have [~~has~~] been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS), the original signed order and all linked records for that order;

(C) a copy of the power of attorney to sign DEA 222 order forms (if applicable);

(D) suppliers' invoices of dangerous drugs and controlled substances dated and initialed or signed by the person receiving the drugs; a pharmacist shall verify that the controlled drugs listed on the invoices were added to the pharmacy's perpetual inventory by clearly recording his/her initials and the date of review of the perpetual inventory;

(E) supplier's credit memos for controlled substances and dangerous drugs;

(F) a 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 copy of the perpetual inventory on-site;

(G) reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(H) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(I) a copy of any notification required by the Texas Pharmacy Act or these rules, including, but not limited to, the following:

(i) reports of theft or significant loss of controlled substances to DEA [~~DP~~], and the board;

(ii) notification of a change in pharmacist-in-charge of a pharmacy; and

(iii) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(6) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(A) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met: [-]

(i) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of ~~DEA [the Drug Enforcement Administration]~~ as required by the Code of Federal Regulations, Title 21, §1304(a), and submits a copy of this written notification to the board [~~Texas State Board of Pharmacy~~]. Unless the registrant is informed by the divisional director of ~~DEA [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; [-]

(ii) The pharmacy maintains a copy of the notification required in this subparagraph; and [-]

(iii) 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.

(B) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(C) Access to records. If the records are kept in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(D) 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 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 March 25, 2019.

TRD-201900892

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-8010

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.123

The Texas State Board of Pharmacy proposes amendments to §291.123, concerning Central Prescription Drug or Medication Order Processing. The amendments, if adopted, allow a pharmacy technician employee who is licensed in Texas to remotely access a Class A, Class C, or Class E pharmacy engaged in centralized prescription drug or medication order processing's data base in order to process prescription or medication drug orders.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide pharmacies more flexibility in employment, and to provide pharmacy technicians more employment opportunities, by allowing pharmacy technicians to perform certain duties remotely. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

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

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

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

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

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

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

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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.

§291.123. *Central Prescription Drug or Medication Order Processing.*

(a) Purpose.

(1) The purpose of this section is to provide standards for centralized prescription drug or medication order processing by a Class A (Community), Class C (Institutional), or Class E (Non-Resident) pharmacy.

(2) Any facility established for the purpose of processing prescription drug or medication drug orders shall be licensed as a Class A, Class C, or Class E pharmacy under the Act. However, nothing in this subsection shall prohibit an individual pharmacist employee or individual pharmacy technician employee who is licensed in Texas from remotely accessing the pharmacy's electronic data base from outside the pharmacy in order to process prescription or medication drug orders, provided the pharmacy establishes controls to protect the privacy and security of confidential records.

(b) - (d) (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 March 25, 2019.

TRD-201900897

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-8010



SUBCHAPTER H. OTHER CLASSES OF PHARMACY

22 TAC §291.151

The Texas State Board of Pharmacy proposes amendments to §291.151, concerning Pharmacies Located in a Freestanding Emergency Medical Care Facility (Class F). The amendments, if adopted, remove an outdated reference to the Department of Public Safety as one of the agencies to which reports of theft or loss of controlled substances are made and correct grammatical errors.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules. Ms. Benz has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear records requirements without outdated references. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

(1) The proposed rules do not create or eliminate a government program;

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

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

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

(5) The proposed rules do not create a new regulation;

(6) The proposed rules do limit an existing regulation by removing outdated requirements;

(7) The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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.

§291.151. *Pharmacies Located in a Freestanding Emergency Medical Care Facility (Class F)*

(a) Purpose. The purpose of this section is to provide standards in the conduct, practice activities, and operation of a pharmacy located in a freestanding emergency medical care facility [~~facilities~~] that is licensed by the Texas Department of State Health Services or in a freestanding emergency medical care facility operated by a hospital that is exempt from registration as provided by §254.052, Health and Safety Code. Class F pharmacies located in a freestanding emergency medical care facility shall comply with this section.

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

(1) Act--The Texas Pharmacy Act, Occupations Code, Subtitle J, as amended.

(2) Administer--The direct application of a prescription drug by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

(3) Automated medication supply system--A mechanical system that performs operations or activities relative to the storage and distribution of medications for administration and which collects, controls, and maintains all transaction information.

(4) Board--The Texas State Board of Pharmacy.

(5) Consultant pharmacist--A pharmacist retained by a facility on a routine basis to consult with the FEMCF in areas that pertain to the practice of pharmacy.

(6) Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1 - 4 of the Texas Controlled Substances Act, as amended, or a drug immediate precursor, or other substance included in Schedules [Schedule] I - V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(7) 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.

(8) Distribute--The delivery of a prescription drug or device other than by administering or dispensing.

(9) Downtime--Period of time during which a data processing system is not operable.

(10) 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.

(11) Floor stock--Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other FEMCF department (excluding the pharmacy) for the purpose of administration to a patient of the FEMCF.

(12) Formulary--List of drugs approved for use in the FEMCF by an appropriate committee of the FEMCF.

(13) Freestanding emergency medical care facility (FEMCF)--A freestanding facility that is licensed by the Texas Department of State Health Services pursuant to Chapter 254, Health and Safety Code, to provide emergency care to patients.

(14) Hard copy--A physical document that is readable without the use of a special device (i.e., data processing system, computer, etc.).

(15) Investigational new drug--New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the federal Food and Drug Administration.

(16) Medication order--An order from a practitioner or his authorized agent for administration of a drug or device.

(17) Pharmacist-in-charge--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.

(18) Pharmacy--Area or areas in a facility, separate from patient care areas, where drugs are stored, bulk compounded, delivered, compounded, dispensed, and/or distributed to other areas or departments of the FEMCF, or dispensed to an ultimate user or his or her agent.

(19) Prescription drug--

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(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 order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(20) Prescription drug order--

(A) An order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) An order pursuant to Subtitle B, Chapter 157, Occupations Code.

(21) 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.

(22) Part-time pharmacist--A pharmacist who works less than full-time.

(23) 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.

(24) 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.

(25) Texas Controlled Substances Act--The Texas Controlled Substances Act, [the] Health and Safety Code, Chapter 481, as amended.

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each FEMCF shall have one pharmacist-in-charge who is employed or under contract, at least on a consulting or part-time basis, but may be employed on a full-time basis.

(B) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(i) establishing specifications for procurement and storage of all materials, including drugs, chemicals, and biologicals;

(ii) participating in the development of a formulary for the FEMCF, subject to approval of the appropriate committee of the FEMCF;

(iii) distributing drugs to be administered to patients pursuant to the practitioner's medication order;

(iv) filling and labeling all containers from which drugs are to be distributed or dispensed;

(v) maintaining and making available a sufficient inventory of antidotes and other emergency drugs, both in the pharmacy and patient care areas, as well as current antidote information, tele-

phone numbers of regional poison control center and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the FEMCF;

(vi) maintaining records of all transactions of the FEMCF pharmacy as may be required by applicable state and federal law, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials;

(vii) participating in those aspects of the FEMCF's patient care evaluation program which relate to pharmaceutical material utilization and effectiveness;

(viii) participating in teaching and/or research programs in the FEMCF;

(ix) implementing the policies and decisions of the appropriate committee(s) relating to pharmaceutical services of the FEMCF;

(x) providing effective and efficient messenger and delivery service to connect the FEMCF pharmacy with appropriate areas of the FEMCF on a regular basis throughout the normal workday of the FEMCF;

(xi) labeling, storing, and distributing investigational new drugs, including maintaining information in the pharmacy and nursing station where such drugs are being administered, concerning the dosage form, route of administration, strength, actions, uses, side effects, adverse effects, interactions, and symptoms of toxicity of investigational new drugs;

(xii) meeting all inspection and other requirements of the Texas Pharmacy Act and this section; and

(xiii) maintaining records in a data processing system such that the data processing system is in compliance with the requirements for an [a] FEMCF; and

(xiv) ensuring that a pharmacist visits the FEMCF at least once each calendar week that the facility is open.

(2) Consultant pharmacist.

(A) The consultant pharmacist may be the pharmacist-in-charge.

(B) A written contract shall exist between the FEMCF and any consultant pharmacist, and a copy of the written contract shall be made available to the board upon request.

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the FEMCF pharmacy competently, safely, and adequately to meet the needs of the patients of the facility.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting the responsibilities as outlined in paragraph (1)(B) of this subsection and in ordering, administering, and accounting for pharmaceutical materials.

(iii) All pharmacists shall be responsible for any delegated act performed by pharmacy technicians or pharmacy technician trainees under his or her supervision.

(iv) All pharmacists while on duty shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties of the pharmacist-in-charge and all other pharmacists shall include, but need not be limited to, the following:

(i) receiving and interpreting prescription drug orders and oral medication orders and reducing these orders to writing either manually or electronically;

(ii) selecting prescription drugs and/or devices and/or suppliers; and

(iii) interpreting patient profiles.

(C) Special requirements for compounding non-sterile preparations. All pharmacists engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(4) Pharmacy technicians and pharmacy technician trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties. Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in paragraph (3)(B) of this subsection. Duties may include, but need not be limited to, the following functions, under the direct supervision of a pharmacist:

(i) prepacking and labeling unit and multiple dose packages, provided a pharmacist supervises and conducts a final check and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(ii) preparing, packaging, compounding, or labeling prescription drugs pursuant to medication orders, provided a pharmacist supervises and checks the preparation;

(iii) compounding non-sterile preparations pursuant to medication orders provided the pharmacy technicians or pharmacy technician trainees have completed the training specified in §291.131 of this title;

(iv) bulk compounding, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her name, initials, or electronic signature to the appropriate quality control records prior to distribution;

(v) distributing routine orders for stock supplies to patient care areas;

(vi) entering medication order and drug distribution information into a data processing system, provided judgmental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order or in compliance with the absence of pharmacist requirements contained in subsection (d)(6)(D) and (E) of this section;

(vii) maintaining inventories of drug supplies;

(viii) maintaining pharmacy records; and

(ix) loading drugs into an automated medication supply system. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist.

(C) Procedures.

(i) Pharmacy technicians and pharmacy technician trainees shall handle medication orders in accordance with standard written procedures and guidelines.

(ii) Pharmacy technicians and pharmacy technician trainees shall handle prescription drug orders in the same manner as pharmacy technicians or pharmacy technician trainees working in a Class A pharmacy.

(D) Special requirements for compounding non-sterile preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations shall meet the training requirements specified in §291.131 of this title.

(5) Owner. The owner of an an [a] FEMCF pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) establishing policies for procurement of prescription drugs and devices and other products dispensed from the FEMCF pharmacy;

(B) establishing and maintaining effective controls against the theft or diversion of prescription drugs;

(C) if the pharmacy uses an automated medication supply system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(D) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(E) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(6) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows:

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) Operational standards.

(1) Licensing requirements.

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

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

(C) An [A] FEMCF pharmacy which changes location and/or name shall notify the board of the change within 10 days and file for an amended license as specified in §291.3 of this title.

(D) 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 10 days of the change, following the procedures in §291.3 of this title.

(E) An [A] FEMCF pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

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

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

(H) An [A] FEMCF pharmacy, which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1), concerning community pharmacy (Class A), is not required to secure a license for the other type of pharmacy; provided, however, such license is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Requirements Records), to the extent such sections are applicable to the operation of the pharmacy.

(I) An [A] FEMCF pharmacy engaged in the compounding of non-sterile preparations shall comply with the provisions of §291.131 of this title.

(2) Environment.

(A) General requirements.

(i) Each FEMCF shall have a designated work area separate from patient areas, and which shall have space adequate for the size and scope of pharmaceutical services and shall have adequate space and security for the storage of drugs.

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

(B) Special requirements.

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

(ii) The FEMCF pharmacy shall have a designated area for the storage of poisons and externals separate from drug storage areas.

(C) Security.

(i) The pharmacy and storage areas for prescription drugs and/or devices shall be enclosed and capable of being locked by key, combination, or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized

by the pharmacist-in-charge may enter the pharmacy or have access to storage areas for prescription drugs and/or devices.

(ii) The pharmacist-in-charge shall consult with FEMCF personnel with respect to security of the drug storage areas, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

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

(3) Equipment and supplies. FEMCFs supplying drugs for outpatient use shall have the following equipment and supplies:

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

(B) adequate supply of child-resistant, moisture-proof, and light-proof containers; and

(C) adequate supply of prescription labels and other applicable identification labels.

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

(A) current copies of the following:

(i) Texas Pharmacy Act and rules;

(ii) Texas Dangerous Drug Act and rules;

(iii) Texas Controlled Substances Act and rules; and

(iv) Federal Controlled Substances Act and rules or official publication describing the requirements of the Federal Controlled Substances Act and rules;

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

(5) Drugs.

(A) Procurement, preparation, and storage.

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

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

(iii) FEMCF 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).

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

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

(vi) Outdated drugs shall be removed from dispensing stock and shall be quarantined together until such drugs are disposed of.

(B) Formulary.

(i) A formulary may be developed by an appropriate committee of the FEMCF.

(ii) The pharmacist-in-charge, consultant pharmacist, or designee shall be a full voting member of any committee which involves pharmaceutical services.

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

(I) a formulary has been developed;

(II) the formulary has been approved by the medical staff of the FEMCF;

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

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

(C) Prepackaging and loading drugs into automated medication supply system.

(i) Prepackaging of drugs.

(I) 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.

(II) 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-) expiration date; and

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

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

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

(-b-) facility's lot number;

(-c-) manufacturer or distributor;

(-d-) manufacturer's lot number;

(-e-) expiration date;

(-f-) quantity per prepackaged unit;

(-g-) number of prepackaged units;

(-h-) date packaged;

(-i-) name, initials, or electronic signature of the packer; and

(-j-) signature or electronic signature of the responsible pharmacist.

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

(ii) Loading bulk unit of use drugs into automated medication supply systems. Automated medication supply systems

may be loaded with bulk unit of use drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist. For the purpose of this clause, direct supervision may be accomplished by physically present supervision or electronic monitoring by a pharmacist. In order for the pharmacist to electronically monitor, the medication supply system must allow for bar code scanning to verify the loading of drugs, and a record of the loading must be maintained by the system and accessible for electronic review by the pharmacist.

(6) Medication orders.

(A) Drugs may be administered to patients in FEMCFs only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (5)(B) of this subsection.

(B) Drugs may be distributed only pursuant to the copy of the practitioner's medication order.

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

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

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs of a patient may be removed from the FEMCF pharmacy.

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

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

- (I) name of the patient;
- (II) name of device or drug, strength, and dosage form;
- (III) dose prescribed;
- (IV) quantity taken;
- (V) time and date; and
- (VI) signature or electronic signature of person making withdrawal.

(iv) The medication order in the patient's chart may substitute for such record, provided the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

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

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

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

(iii) The pharmacist shall conduct an audit of the patient's medical record according to the schedule set out in the policy and procedures at a reasonable interval, but such interval must occur at least once in every calendar week that the pharmacy is open.

(7) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable for removing drugs or devices in the absence of a pharmacist.

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

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

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

- (i) name of the drug, strength, and dosage form;
- (ii) quantity removed;
- (iii) location of floor stock;
- (iv) date and time; and
- (v) signature or electronic signature of person making the withdrawal.

(D) A pharmacist shall verify the withdrawal according to the following schedule.

(i) In facilities with a full-time pharmacist, the withdrawal shall be verified as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(ii) In facilities with a part-time or consultant pharmacist, the withdrawal shall be verified after a reasonable interval, but such interval must occur at least once in every calendar week that the pharmacy is open.

(iii) The medication order in the patient's chart may substitute for the record required in subparagraph (C) of this paragraph, provided the medication order meets all the requirements of subparagraph (C) of this paragraph.

(8) Policies and procedures. Written policies and procedures for a drug distribution system, appropriate for the freestanding emergency medical facility, shall be developed and implemented by the pharmacist-in-charge with the advice of the appropriate committee. The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

- (A) controlled substances;
- (B) investigational drugs;
- (C) prepackaging and manufacturing;
- (D) medication errors;
- (E) orders of physician or other practitioner;
- (F) floor stocks;
- (G) adverse drug reactions;
- (H) drugs brought into the facility by the patient;
- (I) self-administration;
- (J) emergency drug tray;
- (K) formulary, if applicable;

- (L) drug storage areas;
- (M) drug samples;
- (N) drug product defect reports;
- (O) drug recalls;
- (P) outdated drugs;
- (Q) preparation and distribution of IV admixtures;
- (R) procedures for supplying drugs for postoperative use, if applicable;
- (S) use of automated medication supply systems;
- (T) use of data processing systems; and
- (U) drug regimen review.

(9) Drugs supplied for outpatient use. Drugs provided to patients for take home use shall be supplied according to the following procedures.

(A) Drugs may only be supplied to patients who have been admitted to the FEMCF.

(B) Drugs may only be supplied in accordance with the system of control and accountability established for drugs supplied from the FEMCF; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only drugs listed on the approved outpatient drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the medical staff and shall consist of drugs of the nature and type to meet the immediate postoperative needs of the FEMCF patient.

(D) Drugs may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately pre-labeled (including name, address, and phone number of the facility and necessary auxiliary labels) by the pharmacy, provided, however that topicals and ophthalmics in original manufacturer's containers may be supplied in a quantity exceeding a 72-hour supply.

(E) At the time of delivery of the drug, the practitioner shall complete the label, such that the prescription container bears a label with at least the following information:

- (i) date supplied;
- (ii) name of practitioner;
- (iii) name of patient;
- (iv) directions for use;
- (v) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and
- (vi) unique identification number.

(F) After the drug has been labeled, the practitioner or a licensed nurse under the supervision of the practitioner shall give the appropriately labeled, prepackaged medication to the patient.

(G) A perpetual record of drugs which are supplied from the FEMCF shall be maintained which includes:

- (i) name, address, and phone number of the facility;
- (ii) date supplied;
- (iii) name of practitioner;

- (iv) name of patient;
- (v) directions for use;
- (vi) brand name and strength of the drug; or if no brand name, then the generic name of the drug dispensed, strength, and the name of the manufacturer or distributor of the drug; and
- (vii) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall review the records at least once in every calendar week that the pharmacy is open.

(10) Drug regimen review.

(A) A pharmacist shall evaluate medication orders and patient medication records for:

- (i) known allergies;
- (ii) rational therapy--contraindications;
- (iii) reasonable dose and route of administration;
- (iv) reasonable directions for use;
- (v) duplication of therapy;
- (vi) drug-drug interactions;
- (vii) drug-food interactions;
- (viii) drug-disease interactions;
- (ix) adverse drug reactions;
- (x) proper utilization, including overutilization or underutilization; and
- (xi) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(B) A retrospective, random drug regimen review as specified in the pharmacy's policies and procedures shall be conducted on a periodic basis to verify proper usage of drugs not to exceed 31 days between such reviews.

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

(e) Records.

(1) Maintenance of records.

(A) Every inventory or other record required to be kept under the provisions of this section (relating to Pharmacies Located in a Freestanding Emergency Medical Care Facility (Class F) shall be:

(i) kept by the 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 other authorized local, state, or federal law enforcement agencies; and

(ii) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board [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.

(B) Records of controlled substances listed in Schedule II shall be maintained separately and readily retrievable from all other records of the pharmacy.

(C) 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 subparagraph, "readily retrievable" means that the controlled substances shall be asterisked, redlined [red-lined], or in some other manner readily identifiable apart from all other items appearing on the record.

(D) Records, except when specifically required to be maintained in original or hard copy [~~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:

(i) the records in the alternative data retention system contain all of the information required on the manual record; and

(ii) 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.

(E) Controlled substance records shall be maintained in a manner to establish receipt and distribution of all controlled substances.

(F) An [A] FEMCF pharmacy shall maintain a perpetual inventory of controlled substances listed in Schedules [Schedule] II - V which shall be verified for completeness and reconciled at least once in every calendar week that the pharmacy is open.

(G) Distribution records for controlled substances, listed in Schedules [Schedule] II - V shall include the following information:

(i) patient's name;

(ii) practitioner's name who ordered the drug;

(iii) name of drug, dosage form, and strength;

(iv) time and date of administration to patient and quantity administered;

(v) signature or electronic signature of individual administering the controlled substance;

(vi) returns to the pharmacy; and

(vii) waste (waste is required to be witnessed and cosigned, manually or electronically, by another individual).

(H) The record required by subparagraph (G) of this paragraph shall be maintained separately from patient records.

(I) A pharmacist shall conduct an audit by randomly comparing the distribution records required by subparagraph (G) with the medication orders in the patient record on a periodic basis to verify proper administration of drugs not to exceed 30 days between such reviews.

(2) Patient records.

(A) Each medication order or set of orders issued together shall bear the following information:

(i) patient name;

(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, defined as a licensed nurse employee or consultant/full or part-time pharmacist of the FEMCF.

(B) Medication orders shall be maintained with the medication administration record in the medical records of the patient.

(3) General requirements for records maintained in a data processing system [are as follows].

(A) If an FEMCF pharmacy's data processing system is not in compliance with the board's requirements, the pharmacy must maintain a manual recordkeeping system.

(B) The facility shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis to assure that data is not lost due to system failure.

(C) 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:

(I) all of the information required on the original document; or

(II) for records of distribution and return for all controlled substances, the same information as required on the audit trail printout as specified in subparagraph (F) of this paragraph. The information on the printout shall be sorted and printed by drug name and list all distributions and returns chronologically.

(D) Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) 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.

(F) The data processing system shall have the capacity to produce a hard copy [~~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 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.

(G) An audit trail printout for each strength and dosage form of the [these] drugs distributed during the preceding month shall be produced at least monthly and shall be maintained in a separate file

at the facility. The information on this printout shall be sorted by drug name and list all distributions/returns for that drug chronologically.

(H) 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 clause shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the board [~~Texas State Board of Pharmacy~~], or other authorized local, state, or federal law enforcement or regulatory agencies.

(I) In the event that an FEMCF pharmacy which uses a data processing system experiences system downtime, the pharmacy must have an auxiliary procedure which will ensure that all data is retained for online [~~on-line~~] data entry as soon as the system is available for use again.

(4) 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.

(A) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to possess that controlled substance.

(B) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed 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.

(C) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(i) the actual date of distribution;

(ii) the name, strength, and quantity of controlled substances distributed;

(iii) the name, address, and DEA registration number of the distributing pharmacy; and

(iv) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(D) If the distribution is for a Schedule II controlled substance, the following is applicable.

(i) 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.

(ii) 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 DEA [~~the Drug Enforcement Administration~~].

(5) Other records. Other records to be maintained by the pharmacy include:

(A) a permanent log of the initials or identification codes which identifies [~~will identify~~] each pharmacist by name. The

initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes cannot be used;

(B) 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 and/or for each order filled using the DEA Controlled Substance Ordering System (CSOS), the original signed order and all linked records for that order;

(C) a copy of the power of attorney to sign DEA 222 order forms (if applicable);

(D) suppliers' invoices of dangerous drugs and controlled substances dated and initialed or signed by the person receiving the drugs; a pharmacist shall verify that the controlled drugs listed on the invoices were added to the pharmacy's perpetual inventory by clearly recording his/her initials and the date of review of the perpetual inventory;

(E) supplier's credit memos for controlled substances and dangerous drugs;

(F) a 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 [~~on-site~~];

(G) reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(H) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(I) a copy of any notification required by the Texas Pharmacy Act or these rules, including, but not limited to, the following:

(i) reports of theft or significant loss of controlled substances to DEA[; ~~DPS;~~] and the board;

(ii) notification of a change in pharmacist-in-charge of a pharmacy; and

(iii) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(6) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(A) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:[-]

(i) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of DEA [~~the Drug Enforcement Administration~~] as required by the Code of Federal Regulations, Title 21, §1304(a), and submits a copy of this written notification to the board [~~Texas State Board of Pharmacy~~]. Unless the registrant is informed by the divisional director of DEA [~~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;[-]

(ii) The pharmacy maintains a copy of the notification required in this subparagraph; and[-]

(iii) 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.

(B) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(C) 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.

(D) 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 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 March 25, 2019.

TRD-201900893

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-8010



22 TAC §291.153

The Texas State Board of Pharmacy proposes amendments to §291.153, concerning Central Prescription Drug or Medication Order Processing Pharmacy (Class G). The amendments, if adopted, allow a pharmacy technician employee who is licensed in Texas to remotely access a Class G pharmacy's data base in order to process prescription or medication drug orders and update the requirements for pharmacist electronic supervision of and electronic verification of data entry by pharmacy technicians and pharmacy technician trainees to remove the requirement that a pharmacist and the pharmacy technicians or pharmacy technician trainees be on site in the Class G pharmacy.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide pharmacies more flexibility in employment, and to provide pharmacy technicians more employment opportunities, by allowing pharmacy technicians to perform certain duties remotely. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

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

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

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

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

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

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

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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.

§291.153. *Central Prescription Drug or Medication Order Processing Pharmacy (Class G).*

(a) Purpose.

(1) The purpose of this section is to provide standards for a centralized prescription drug or medication order processing pharmacy.

(2) Any facility established for the primary purpose of processing prescription drug or medication drug orders shall be licensed as a Class G pharmacy under the Act. A Class G pharmacy shall not store bulk drugs, or dispense a prescription drug order. Nothing in this subsection shall prohibit an individual pharmacist employee or individual pharmacy technician employee who is licensed in Texas from remotely accessing the pharmacy's electronic data base from a location other than a licensed pharmacy in order to process prescription or medication drug orders, provided the pharmacy establishes controls to protect the privacy and security of confidential records, and the Texas-licensed pharmacist or pharmacy technician does not engage in the receiving of written prescription or medication orders or the maintenance of prescription or medication drug orders at the non-licensed remote location.

(b) (No change.)

(c) Personnel.

(1) Pharmacist-in-charge.

(A) General. Each Class G pharmacy shall have one pharmacist-in-charge who is employed on a full-time basis, who may be the pharmacist-in-charge for only one such pharmacy.

(B) Responsibilities. The pharmacist-in-charge shall have responsibility for the practice of pharmacy at the pharmacy for which he or she is the pharmacist-in-charge. The pharmacist-in-charge

may advise the owner on administrative or operational concerns. The pharmacist-in-charge shall have responsibility for, at a minimum, the following:

- (i) educating and training pharmacy technicians and pharmacy technician trainees;
- (ii) maintaining records of all transactions of the Class G pharmacy required by applicable state and federal laws and sections;
- (iii) adhering to policies and procedures regarding the maintenance of records in a data processing system such that the data processing system is in compliance with Class G pharmacy requirements; and
- (iv) legally operating the pharmacy, including meeting all inspection and other requirements of all state and federal laws or sections governing the practice of pharmacy.

(2) Owner. The owner of a Class G pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(A) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(B) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(3) Pharmacists.

(A) General.

(i) The pharmacist-in-charge shall be assisted by sufficient number of additional licensed pharmacists as may be required to operate the Class G pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(ii) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities.

(iii) Pharmacists are solely responsible for the direct supervision of pharmacy technicians and pharmacy technician trainees and for designating and delegating duties, other than those listed in subparagraph (B) of this paragraph, to pharmacy technicians and pharmacy technician trainees. Each pharmacist shall be responsible for any delegated act performed by pharmacy technicians and pharmacy technician trainees under his or her supervision.

(iv) Pharmacists shall directly supervise pharmacy technicians and pharmacy technician trainees who are entering prescription data into the pharmacy's data processing system by one of the following methods.

(I) Physically present supervision. A pharmacist shall be physically present to directly supervise a pharmacy technician or pharmacy technician trainee who is entering prescription order or medication order data into the data processing system. Each prescription or medication order entered into the data processing system shall be verified at the time of data entry.

(II) Electronic supervision. A pharmacist may electronically supervise a pharmacy technician or pharmacy technician

trainee who is entering prescription order or medication order data into the data processing system provided the pharmacist:

~~(-a) the pharmacist has the ability to immediately communicate directly with the technician/trainee;~~

~~{(-a) is on-site, in the pharmacy where the technician/trainee is located;}~~

(-b-) has immediate access to any original document containing prescription or medication order information or other information related to the dispensing of the prescription or medication order. Such access may be through imaging technology provided the pharmacist has the ability to review the original, hardcopy documents if needed for clarification; and

(-c-) verifies the accuracy of the data entered information prior to the release of the information to the system for storage.

(III) Electronic verification of data entry by pharmacy technicians or pharmacy technician trainees. A pharmacist may electronically verify the data entry of prescription information into a data processing system provided:

~~(-a) the pharmacist has the ability to immediately communicate directly with the technician/trainee;~~

~~{(-a) a pharmacist is on-site in the pharmacy where the pharmacy technicians/trainees are located;}~~

(-b-) the pharmacist electronically conducting the verification is either a:

(-1-) Texas licensed pharmacist; or

(-2-) pharmacist employed by a Class E pharmacy that has the same owner as the Class G pharmacy where the pharmacy technicians/trainees are located or that has entered into a written contract or agreement with the Class G pharmacy, which outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws and regulations;

(-c-) the pharmacy establishes controls to protect the privacy and security of confidential records; and

(-d-) the pharmacy keeps permanent records of prescriptions electronically verified for a period of two years.

(v) All pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(B) Duties. Duties which may only be performed by a pharmacist are as follows:

(i) receiving oral prescription drug or medication orders and reducing these orders to writing, either manually or electronically;

(ii) interpreting prescription drug or medication orders;

(iii) selecting drug products;

(iv) verifying the data entry of the prescription drug or medication order information at the time of data entry prior to the release of the information to a Class A, Class C, or Class E pharmacy for dispensing;

(v) communicating to the patient or patient's agent information about the prescription drug or device which in the exercise of the pharmacist's professional judgment, the pharmacist deems significant, as specified in §291.33(c) of this title (relating to Operational Standards);

(vi) communicating to the patient or the patient's agent on his or her request information concerning any prescription drugs dispensed to the patient by the pharmacy;

(vii) assuring that a reasonable effort is made to obtain, record, and maintain patient medication records; and

(viii) interpreting patient medication records and performing drug regimen reviews.

(4) Pharmacy Technicians and Pharmacy Technician Trainees.

(A) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(B) Duties.

(i) Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in paragraph (3)(B) of this subsection.

(ii) A pharmacist may delegate to pharmacy technicians and pharmacy technician trainees any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(I) a pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians and pharmacy technician trainees;

(II) pharmacy technicians and pharmacy technician trainees are under the direct supervision of and responsible to a pharmacist; and

(iii) Pharmacy technicians and pharmacy technician trainees may perform only nonjudgmental technical duties associated with the preparation of prescription drugs, as follows:

(I) initiating and receiving refill authorization requests; and

(II) entering prescription or medication order data into a data processing system.

(C) Ratio of on-site pharmacists to pharmacy technicians and pharmacy technician trainees. A Class G pharmacy may have a ratio of on-site pharmacists to pharmacy technicians and pharmacy technician trainees of 1:8 provided:

(i) at least seven are pharmacy technicians and not pharmacy technician trainees; and

(ii) the pharmacy has written policies and procedures regarding the supervision of pharmacy technicians and pharmacy technician trainees.

(5) Identification of pharmacy personnel. All pharmacy personnel shall be identified as follows.

(A) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician, or a certified pharmacy technician, if the technician maintains current certification with the Pharmacy Technician Certification Board or any other entity providing an examination approved by the board.

(B) Pharmacy technician trainees. All pharmacy technician trainees shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacy technician trainee.

(C) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist intern.

(D) Pharmacists. All pharmacists shall wear an identification tag or badge that bears the person's name and identifies him or her as a pharmacist.

(d) - (e) (No change.)

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

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

TRD-201900898

Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-8010



CHAPTER 295. PHARMACISTS

22 TAC §295.1

The Texas State Board of Pharmacy proposes amendments to §295.1, concerning Change of Address and/or Name. The amendments, if adopted, update the change of address or name requirements for pharmacists to reflect the Board's new procedure of issuing electronic renewal certificates.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be some fiscal implications for state or local government as a result of enforcing or administering the rules in the form of cost savings for the agency. Ms. Benz has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments will be a more efficient and less costly process for providing pharmacist renewal certificates. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

(1) The proposed rules do not create or eliminate a government program;

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

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

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

(5) The proposed rules do not create a new regulation;

(6) The proposed rules do not limit or expand an existing regulation;

(7) The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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.

§295.1. Change of Address and/or Name.

(a) Change of address. A pharmacist shall notify the board in writing within 10 days of a change of address, giving the old and new address and license number.

(b) Change of name.

(1) A pharmacist shall notify the board in writing within 10 days of a change of name by:

(A) sending a copy of the official document reflecting the name change (e.g., marriage certificate, divorce decree, etc.); and

(B) paying a fee of \$20.

(2) Pharmacists who change their name may retain the original license to practice pharmacy (wall certificate). However, if the pharmacist wants an amended license (wall certificate) [~~certificate~~] issued which reflects the pharmacist's name change, the pharmacist must:

(A) return the original license (wall certificate) [~~certificate~~]; and

(B) pay a fee of \$35.

(3) An amended electronic renewal [~~license and/or~~] certificate reflecting the new name of the pharmacist will be issued by the board without a 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 March 25, 2019.

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-8010



22 TAC §295.5

The Texas State Board of Pharmacy proposes amendments to §295.5, concerning Pharmacist License or Renewal Fees. The amendments, if adopted, remove the fees for duplicate

or amended renewal certificates to reflect the Board's new procedure of issuing electronic renewal certificates and correct a subsection reference.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be some fiscal implications for state or local government as a result of enforcing or administering the rules in the form of cost savings for the agency. Ms. Benz has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments will be a more efficient and less costly process for providing pharmacist renewal certificates. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

(1) The proposed rules do not create or eliminate a government program;

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

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

(4) The proposed rules do require a decrease in fees paid to the agency;

(5) The proposed rules do not create a new regulation;

(6) The proposed rules do not limit an existing regulation by removing fees;

(7) The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability; and

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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.

§295.5. Pharmacist License or Renewal Fees.

(a) Biennial Registration. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacist licenses provided under the Pharmacy Act, §559.002.

(b) Initial License Fee.

(1) The fee for the initial license shall be \$284 for a two year registration.

(2) New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated based on the assigned expiration date.

(c) Renewal Fee. The fee for biennial renewal of a pharmacist license shall be \$281 for a two year registration.

(d) Exemption from fee. The license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years or who is at least 72 years old shall be renewed without payment of a fee provided such pharmacist is not actively practicing pharmacy. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this subsection may not engage in the active practice of pharmacy without first paying the renewal fee as set out in subsection (c) [(b)] of this section.

~~[(e) Duplicate or Amended Certificates.~~

~~(1) The fee for issuance of an amended pharmacist's license renewal certificate shall be \$20.~~

~~(2) The fee for issuance of an amended license to practice pharmacy (wall certificate) only, or renewal certificate and wall certificate shall be \$35.]~~

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 March 25, 2019.

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.4

The Texas State Board of Pharmacy proposes amendments to §297.4, concerning Fees. The amendments, if adopted, remove the fees for duplicate or amended pharmacy technician trainee registration certificates or pharmacy technician registration renewal certificates to reflect the Board's new procedure of issuing electronic certificates.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be some fiscal implications for state or local government as a result of enforcing or administering the rule in the form of cost savings for the agency. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be a more efficient and less costly process for providing pharmacy technician and pharmacy technician trainee certificates. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

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

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

(4) The proposed rule does require a decrease in fees paid to the agency;

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

(6) The proposed rule does limit an existing regulation by removing fees;

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

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed 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.

§297.4. Fees.

(a) Pharmacy technician trainee. The fee for registration shall be \$55 for a two-year [~~two year~~] registration.

(b) Pharmacy technician.

(1) Biennial Registration. The board shall require biennial renewal of all pharmacy technician registrations provided under Chapter 568 of the Act.

(2) Initial Registration Fee. The fee for initial registration shall be \$83 for a two-year [~~two year~~] registration.

(3) Renewal Fee. The fee for biennial renewal shall be \$80 for a two-year [~~two year~~] registration.

~~[(e) Duplicate or Amended Certificates. The fee for issuance of a duplicate or amended pharmacy technician trainee registration certificate or pharmacy technician registration renewal certificate shall be \$20.]~~

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 March 25, 2019.

TRD-201900884

Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8010



CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.2

The Texas State Board of Pharmacy proposes amendments to §315.2, concerning Official Prescription Form - Effective September 1, 2016. The amendments, if adopted, remove the effective date from the short title and remove language stating that official prescription forms previously issued by the Texas Department of Public Safety are valid.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide rules that accurately reflect the requirements for the use of official prescription forms. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control

and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

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

§315.2. *Official Prescription Form [- Effective September 1, 2016].*

(a) A practitioner may order official prescription forms from the board only if the practitioner is registered by the DEA to prescribe a Schedule II controlled substance.

(b) The board is the sole source for the official prescription forms. [~~However, official prescription forms issued prior to September 1, 2016, by the Texas Department of Public Safety are valid forms.~~]

(c) This subsection applies only to an institutional practitioner who is employed by a hospital or other training institution. An institutional practitioner authorized by a hospital or institution to prescribe a Schedule II controlled substance under the DEA registration of the hospital or institution may order official prescription forms under this section if:

(1) the practitioner prescribes a controlled substance in the usual course of the practitioner's training, teaching program, or employment at the hospital or institution;

(2) the appropriate state health regulatory agency has assigned an institutional permit or similar number to the practitioner; and

(3) the hospital or institution:

(A) maintains a current list of each institutional practitioner and each assigned institutional permit number; and

(B) makes the list available to another registrant or a member of a state health regulatory or law enforcement agency for the purpose of verifying the authority of the practitioner to prescribe the substance.

(d) An advanced practice registered nurse or physician assistant operating under a prescriptive authority agreement pursuant to Texas Occupations Code, Chapter 157 may order official prescription forms under this section if authority to prescribe has been delegated by a physician. Upon withdrawal of the delegating physician's authority such forms are void and must be returned to the board.

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

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010



22 TAC §315.15

The Texas State Board of Pharmacy proposes amendments to §315.15, concerning Access Requirements. The amendments, if adopted, clarify which pharmacist is responsible for the review of the Texas Prescription Monitoring Program database prior to dispensing an opioid, benzodiazepine, barbiturate, or carisoprodol.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clear requirements for pharmacists regarding Texas Prescription Monitoring Program database review. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

Written comments on the amendments may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 5, 2019.

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

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

§315.15. *Access Requirements.*

(a) Effective September 1, 2019, a pharmacist before dispensing an opioid, benzodiazepine, barbiturate, or carisoprodol for a patient shall consult the Texas Prescription Monitoring Program (PMP) database to review the patient's controlled substance history. The dispensing pharmacist of a prescription shall be responsible for the review of the PMP database prior to dispensing the prescription, unless the pharmacy has designated another pharmacist whose identity has been recorded in the pharmacy's data processing system as responsible for PMP review.

(b) The duty to consult the PMP database as described in subsection (a) of this section does not apply in the following circumstances:

- (1) the prescribing individual practitioner is a veterinarian;
- (2) it is clearly noted in the prescription record that the patient has a diagnosis of cancer or is in hospice care; or
- (3) the pharmacist is unable to access the PMP after making and documenting a good faith effort to do so.

(c) If a pharmacist uses pharmacy management systems that integrate data from the PMP, a review of the pharmacy management system with the integrated data shall be deemed compliant with the review of the PMP database as required under §481.0764(a) of the Texas Health and Safety Code and in subsection (a) of this section.

(d) Pharmacists and pharmacy technicians acting at the direction of a pharmacist may only access information contained in the PMP as authorized in §481.076 of Texas Controlled Substances Act. A person who is authorized to access the PMP may only do so utilizing that person's assigned identifier (i.e., login and password) and may not use the assigned identifier of another person. Unauthorized access of PMP information is a violation of Texas Controlled Substances Act, the Texas Pharmacy Act, and board rules.

The agency certifies that legal counsel has reviewed the 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 March 25, 2019.

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Allison Vordenbaumen Benz, R.Ph., M.S.

Executive Director

Texas State Board of Pharmacy

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For further information, please call: (512) 305-8010

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PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.2

The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 Texas Administrative Code §363.2.

Background and Purpose.

In accordance with §1301.4521 and Chapter 53 of the Occupations Code, the Board conducts reviews of individuals with a criminal background seeking licensure by the Board to evaluate their fitness and determine whether their criminal background disqualifies them from being licensed by or registered with the Board. In accordance with §411.122 of the Government Code, the Board is authorized to access criminal background records from the Texas Department of Public Safety (DPS) in order to conduct such reviews, including the submittal and registration of fingerprints with DPS to obtain criminal background records. On January 9, 2019, the Texas Sunset Advisory Commission (Sunset), pursuant to §325.012 of the Government Code, adopted a recommendation for statutory changes to Chapter 1301 of the Occupations Code (Plumbing License Law or

PLL) that would require all licensees and registrants to submit and register their fingerprints with DPS. The recommendation comports with Sunset's Model Standards for Licensing and Regulatory Agencies, which promote fingerprint-based criminal background checks over other types of criminal background checks, particularly when the duties and responsibilities of performing work with the license would allow the individual to enter a person's home, and whether the licensee could injure or harm a member of the public. Fingerprint-based criminal background checks have become more useful given the ability to participate in the Federal Rap Back program joined by Texas, and implemented on January 15, 2018, allowing for near-instant notification of additions to an individual's criminal background, including crimes committed in other states. Taking the foregoing into consideration, the Board anticipates its enabling statute will be amended during the 86th Regular Session to include provisions requiring the Board to conduct fingerprint-based criminal background checks. This proposal begins the process for requiring fingerprint-based criminal background checks and carries out the recommendation of Sunset absent a statutory mandate. This proposal contemplates implementing the requirement for submittal and registration of fingerprints over time, in phases, by amending this rule from time-to-time to add additional license or registration types requiring the submittal and registration of fingerprints.

Section-By-Section Summary.

Amendments to §363.2, concerning General Qualifications, require an applicant for whom the submittal and registration of fingerprints is required to submit documentation of having successfully registered their fingerprints, to the extent they have not previously done so. A new subsection (f) is added, governing which license or registration types require the submittal and registration of fingerprints, allowing the Board to impose the requirement in phases by amending subsection (f). This proposal will impose the requirement for the submittal and registration of fingerprints on individuals seeking a Tradesman Plumber-Limited License.

Fiscal Impact on State and Local Government.

Lisa G. Hill, Executive Director, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the rule.

Public Benefits / Costs to Regulated Persons.

The Executive Director has determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to have more comprehensive criminal background checks on individuals seeking licensure by the Board, better protecting the public's health, safety, and welfare.

The Executive Director has further determined that for the first five years the rule is in effect, licensees or registrants required to submit and register their fingerprints with DPS will incur a one-time fee from DPS or its third-party processing vendor. Upon information and belief, the current fee imposed for processing fingerprints is \$38.25. The Board presently licenses approximately 2,409 Tradesman Plumber-Limited licensees. This rule would impose a cumulative cost of \$92,144.25 on such individuals. The rule would also require affected individuals to travel to a fingerprint collection office to have their fingerprints scanned. These travel costs will vary widely depending upon the individual's place of residence. However, the third-party processing vendor currently utilized by DPS has approximately 109 loca-

tions throughout the state, including many in rural areas, providing for widespread access which should limit travel costs. Taking the foregoing into consideration, the Board asserts the economic costs imposed are minor, particularly considering the individual should be exempted from any further fingerprinting when they renew their license or seek another license type, provided the fingerprints on file continue to meet the requirements for registration with DPS and/or the Federal Bureau of Investigation.

One-for-One Rule Analysis.

This proposal indicates a fiscal note imposing costs on regulated persons which would ordinarily require the Board, prior to adoption of the amendments, to repeal or amend another regulation to negate those costs in accordance with Government Code §2001.0045. However, the Board asserts the proposed amendments are necessary to protect the health, safety, and welfare of the residents of Texas. A plumber is often allowed in private residences, schools, and elder care facilities where they are around people in a private setting, including children and other vulnerable individuals. A plumber will often have unsupervised access to the building where the plumbing system is located and thus may be given access to valuable property. A plumber works with hazardous, explosive or volatile materials and makes crucial decisions impacting the health and safety of the public. Taking the foregoing into consideration, the Board asserts the duties and responsibilities of being licensed by or registered with the Board to perform plumbing require robust criminal background checks, and is precisely the type of activity contemplated by Sunset's Model Standards for Licensing and Regulatory Agencies in recommending fingerprint-based criminal background checks. As a result, the Board asserts this proposal is critical to protect the health, safety, and welfare of the public, and thus the Board is exempted from the requirements of Government Code §2001.0045.

Government Growth Impact Statement.

For each of the first five years the proposed amendments are in effect, the agency has determined the following: (1) the rule does not create or eliminate a government program; (2) implementation of the rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase or decrease in fees paid to the agency; (5) the rule creates a new regulation imposing fingerprint requirements for certain individuals licensed by or registered with the Board; (6) the rule does not expand or limit an existing regulation; (7) the rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the rule does not positively or adversely affect the state's economy.

Local Employment Impact Statement.

The Executive Director has determined that no local economies are substantially affected by the rule, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities, Generally.

The Board incorporates by reference the discussion concerning costs to regulated persons as a result of the rule, discussed supra. The Board licenses and registers individuals, and not businesses or corporate structures, to provide plumbing services to the public. This proposal will impose a one-time cost on those

licensees to whom the rule applies of \$38.25, plus indeterminate travel costs. While the Board intends to eventually impose fingerprinting requirements on other license types over time, this proposal applies only to Tradesman Plumber-Limited License holders. According to statistics maintained by the Texas Comptroller of Public Accounts (Comptroller), 90.5% of businesses in Texas operating as building equipment contractors constitute a small business for purposes of Government Code §2006.001 (a category which includes plumbing contractors and other construction trades such as electrical contractors and heating, ventilation and air conditioning (HVAC) contractors). As a result, most licensees likely work for a business constituting a small or micro-business for purposes of Government Code §2006.001. Moreover, the Tradesman Plumber-Limited License essentially relates to residential plumbing, making it more likely that the licensee works for a small or micro-business. To the extent a plumbing company for whom an individual works elects to absorb these costs on behalf of its employees, small and micro-businesses will be adversely affected by these costs, though indirectly. Rural communities will similarly be impacted by said costs. The foregoing notwithstanding, other than deviations in travel costs, small and micro-businesses, and rural communities, will share identical costs per-person as compared to other sized businesses and urban areas, and their status as a small or micro-business, or a rural community, does not impact these costs.

Economic Impact Statement.

According to the Comptroller, there are 10,387 businesses in Texas operating as building equipment contractors and that constitute a small business for purposes of Government Code §2006.001. These statistics align with the Board's licensee population figures. Specifically, the Board has approximately 7,093 Master Plumber licensees who have records on file indicating they are serving as a Responsible Master Plumber and allowed by law to advertise and market plumbing services directly to the public, and whose services are required to contract for plumbing work, thereby serving as an analogue for the number of plumbing companies operating across Texas. The Board does not maintain or have access to information regarding the precise number of these plumbing companies that meet the definition of a small or micro-business, or how many licensees any particular company employs that would be affected by this proposal. However, were the anticipated adverse costs to be distributed evenly amongst these companies, it would result in a per-company cost of \$12.99. Assuming the percentage of all building equipment contractors constituting small businesses (90%), established by the Comptroller, holds true when plumbing companies are isolated, 6,419 such plumbing companies would be affected, resulting in a per-company cost of \$14.35, to the extent the Tradesman Plumber-Limited licensee population was evenly distributed amongst such companies.

Of the 2,431 Tradesman Plumber-Limited Plumbers licensed by the Board, 759 have a current mailing address on file indicating they may reside in a municipality meeting the definition of a rural community for purposes of Government Code §2006.001 (said mailing address is chosen by the licensee and may not actually be the licensee's place of residence; the municipality listed for purposes of the mailing address may differ from the actual situs of the address; and, the municipality may be located in a metropolitan area and may meet the definition of a rural community while not actually comporting with traditional notions of a rural community (see, e.g., Bellaire, Texas)). Taking the foregoing into consideration, the rule may have an adverse cumulative

impact on rural communities of \$29,031, representing 31.2% of the total adverse impact, excluding travel costs. Rural communities may be disproportionately affected by travel costs in connection with visiting an office of the third-party fingerprint processing vendor to provide their fingerprints. However, DPS' third-party processing vendor presently has approximately 109 such locations throughout the state, including many in rural communities, providing convenient options and limiting travel costs for such individuals.

Regulatory Flexibility Analysis.

The Board considered alternative methods of accomplishing criminal background checks on individuals it licenses and registers to perform plumbing; namely, name-based criminal searches. However, as Sunset aptly points out in its Model Standards for Licensing and Regulatory Agencies, name-based criminal searches are inferior to fingerprint-based searches, particularly in light of participation in the Federal Rap Back program, as noted, supra. As a result, the Board determined that name-based searches are now antiquated by comparison, and inadequate to protect the health and safety of the public, particularly given the private settings to which a plumber is allowed access while performing their work, and the potential for harm to the public by a bad actor entrusted with that access. Having established that fingerprint-based criminal background checks are required to protect the public, the Board explored whether there were any options available to reduce the adverse impact of the rule. However, given that DPS has exclusive control over operating the fingerprint registration program, and the fees set by the third-party processing vendor are fixed and non-negotiable, the Board was unable to identify any alternatives to reduce the adverse impact of the rule.

Takings Impact Assessment.

The Board has determined that there are no private real property interests affected by the rule; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis.

The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

Public Comments.

Written comments regarding the amendments may be submitted by mail to Lisa G. Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line "Public Comment - Fingerprinting Requirements." All comments must be received within 30 days of publication of this proposal.

Statutory Authority.

This proposal is made under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law or PLL). This proposal affects the Plumbing License Law. No other statute is affected by this proposal.

Amended §363.2 is proposed under the authority of, and to implement, §1301.4521 of the PLL. Amended §363.2 is also proposed under the authority of Chapter 53 of the Occupations Code and §411.122 of the Government Code.

§363.2. *General Qualifications.*

(a) (No change.)

(b) In order to qualify for any license, registration, or endorsement, an applicant must:

(1) meet all of the requirements of the Board;

(2) submit documentation evidencing successful submittal of fingerprints for criminal history background checks, as may be required by subsection (f) of this section or the PLL, if applicable [remit the appropriate fee]; [and]

(3) pay the required fee; and [successfully complete the appropriate examination (if any).]

(4) successfully complete and pass the examination, if applicable.

(c) - (e) (No change.)

(f) Fingerprinting Requirements. In accordance with §1301.4521 and Chapter 53 of the Occupations Code, the Board conducts reviews of individuals seeking licensure by the Board with a criminal background to evaluate their fitness and determine whether their criminal background disqualifies them from being licensed by or registered with the Board. In accordance with §411.122 of the Government Code, the Board is authorized to access criminal background records from the Texas Department of Public Safety (DPS) to conduct such reviews, including the submittal and registration with DPS of fingerprints from an individual seeking licensure with the Board, in order to obtain such records. Specifically, the Board's fingerprinting requirements are as follows:

(1) Fingerprints required. The submittal and registration of fingerprints with DPS is required when applying for the following license or registration types: Tradesman Plumber-Limited License.

(2) Resubmittal of fingerprints. The requirement to submit and register fingerprints applies to both an initial application for a license or registration, as well as applications for renewal. However, once fingerprints have been submitted and registered with DPS, an individual ordinarily will not be required to re-submit their fingerprints, including renewals of a license or registration, or when applying for a different license or registration type. The foregoing notwithstanding, re-submittal of fingerprints may be required to the extent required by DPS or its third-party fingerprint processing vendor; for example, to comply with new or enhanced fingerprint records requirements, of if additional biometric data is required to conduct criminal background checks.

(3) Fingerprint procedures; fees. An applicant required to submit and register their fingerprints with DPS in accordance with paragraph (1) of this subsection must follow all instructions and procedures outlined by DPS and its third-party fingerprint processing vendor. The applicant is responsible for and must make payment directly to DPS and/or its designated third-party fingerprint processing vendor, all fees associated with the criminal background fingerprinting process, which is separate from the application fee imposed by the Board.

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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Iain Berry

Staff Attorney

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 936-5202



22 TAC §§363.4, 363.5, 363.8

The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 Texas Administrative Code §§363.4, 363.5 and 363.8.

Background and Purpose. On January 9, 2019, the Texas Sunset Advisory Commission, pursuant to §325.012 of the Government Code, adopted a recommendation directing the Board to eliminate the requirement for individuals licensed by the Board to hold a high school diploma or certificate of high school equivalency in lieu thereof. The amendments, if adopted, would carry out that directive.

Section-By-Section Summary. Amendments to §363.4 remove the educational requirement for an individual to hold a high school diploma or certificate of high school equivalency in order to be eligible to take the examination for, and receive, a Master Plumber License. Specifically, the provisions in existing subsection (a)(1) are eliminated, and the remaining provisions of (a)(2) restructured within subsection (a).

Amendments to §363.5 remove the educational requirement for an individual to hold a high school diploma or certificate of high school equivalency in order to be eligible to take the examination for, and receive, a Journeyman Plumber License. Specifically, the provisions in existing subsection (a)(1) are eliminated, and the remaining provisions of (a)(2) restructured within subsection (a).

Amendments to §363.8 remove the educational requirement for an individual to hold a high school diploma or certificate of high school equivalency in order to be eligible to take the examination for, and receive, a Plumbing Inspector License. Specifically, the provisions in existing subsection (a)(1) are eliminated, and the remaining provisions of (a)(2) restructured within subsection (a).

Fiscal Impact on State and Local Government. Lisa G. Hill, Executive Director, has determined that for the first five-year period the rules are in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rules. The Executive Director has further determined that for the first five-year period the rules are in effect, there will be no foreseeable loss in revenue for the state or local governments as a result of enforcing or administering the rules. The rules may result in an indeterminate increase in revenue to the state in the form of application and license fees as more individuals will be eligible for, and may seek, licensure by the Board. No increase in revenue for local governments is anticipated as a result of the rules directly. However, to the extent the rules result in additional individuals being licensed by the Board, overall plumbing activity in the state may increase, potentially increasing revenue to local governments requiring the permitting and inspection of plumbing work within their jurisdiction, derived from such permits.

Public Benefits / Costs to Regulated Persons. The Executive Director has determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of

enforcing the rules will be the presence of additional plumbers in the marketplace, increasing supply to meet heavy demand for licensed plumbing professionals, and thereby reducing costs to consumers. Removing the requirement will also allow the Board to cease reviewing applications to determine compliance with the requirement, thereby freeing agency resources to focus on other functions, including the investigation of consumer complaints, to the public's benefit.

The Executive Director has further determined that for the first five years the rules are in effect, there are no substantial costs anticipated for persons required to comply with the rules.

One-for-One Rule Analysis. Given the rules do not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, the Board asserts proposal and adoption of the rules is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement. For each of the first five years the proposed amendments are in effect, the agency has determined the following: (1) the rules do not create or eliminate a government program; (2) implementation of the rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the rules do not require an increase or decrease in fees paid to the agency by persons already regulated by the Board, and would not alter applicable fee amounts for licensure; however, as related, *supra*, the rules may result in additional individuals being licensed by the Board, which would cause additional fees to be paid to the agency; (5) the rules do not create a new regulation; (6) the rules do not expand or limit an existing regulation but remove a regulation, expanding the number of individuals eligible for licensure by the Board; (7) the rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the rules do not adversely affect this state's economy and have the potential to positively impact the state's economy by putting additional licensed plumbers into the marketplace, spurring economic activity and growth.

Local Employment Impact Statement. The Executive Director has determined that no local economies are substantially affected by the rules, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities. The Executive Director has determined that the rules will not have an adverse effect on small or micro-businesses, or rural communities, because there are no substantial anticipated costs to persons who are required to comply with the rules. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment. The Board has determined that there are no private real property interests affected by the rules; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis. The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code

§2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

Public Comments. Written comments regarding the amendments may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line "Public Comment - High School Diploma." All comments must be received within 30 days of publication of this proposal.

Statutory Authority. This proposal is made under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law or PLL). This proposal affects the Plumbing License Law. No other statute is affected by this proposal.

Amended §363.4 is proposed under the authority of, and to implement, §1301.002(5) of the PLL.

Amended §363.5 is proposed under the authority of, and to implement, §1301.002(4) and §1301.3541 of the PLL.

Amended §363.8 is proposed under the authority of, and to implement, §1301.002(8) of the PLL.

§363.4. Master Plumber License.

(a) To be eligible for a Master Plumber License an applicant must hold a current Journeyman Plumber License issued by the Board or from another state of the United States, and is required to have held said license for the sufficient amount of time, as follows:

(1) four years or more [have obtained a high school diploma, or the equivalent of a high school diploma]; or [and]

(2) one year or more, if the applicant has successfully completed a training program approved by the United States Department of Labor, Office of Apprenticeship or another nationally-recognized apprentice training program accepted by the Board. [have held a Journeyman Plumber License issued in Texas or another state:]

~~[(A) for at least four years; or]~~

~~[(B) for at least one year if the applicant has successfully completed a training program approved by the United States Department of Labor, Office of Apprenticeship or another nationally-recognized apprentice training program accepted by the Board.]~~

(b) (No change.)

§363.5. Journeyman Plumber License.

(a) To be eligible for a Journeyman Plumber License an applicant must have completed forty-eight (48) hours of classroom training provided by a Board-approved instructor in a Board-approved training program meeting the requirements of subsections (f) and (g) of this section. [:]

~~[(1) have obtained a high school diploma, or the equivalent of a high school diploma; and]~~

~~[(2) have completed forty-eight (48) hours of classroom training provided by a Board-approved instructor in a Board-approved training program in the areas of health and safety, the latest version of all plumbing codes adopted by the Board, and water conservation.]~~

(b) - (g) (No change.)

§363.8. Plumbing Inspector License.

(a) To be eligible for a Plumbing Inspector License an applicant must hold one of the following:

(1) a current Journeyman or Master Plumber License issued in Texas or another state [have obtained a high school diploma, or the equivalent of a high school diploma]; [and]

(2) a current Plumbing Inspector License issued in another state with licensing requirements substantially equivalent to the licensing requirements of the Board; or [hold one of the following:]

[(A) a current Journeyman or Master Plumber License issued in Texas or another state;]

[(B) a current Plumbing Inspector license issued in another state with licensing requirements substantially equivalent to the licensing requirements of the Board; or]

[(C) a current professional engineer or a professional architect license issued in Texas.]

(3) a current professional engineer or a professional architect license issued in Texas.

(b) - (c) (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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For further information, please call: (512) 936-5202



CHAPTER 367. ENFORCEMENT

22 TAC §367.14, §367.15

The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 Texas Administrative Code §367.14 and §367.15.

Background and Purpose. In accordance with Occupations Code §1301.303, the Board investigates complaints alleging violations of Chapter 1301 of the Occupations Code (Plumbing License Law or PLL). On January 9, 2019, the Texas Sunset Advisory Commission (Sunset), pursuant to §325.012 of the Government Code, adopted a recommendation directing the Board to amend its rules implementing §1301.303(e) of the PLL, concerning the prioritization and investigation of complaints, to include specific parameters governing such prioritization which currently occurs informally at the discretion of Board staff. The amendments, if adopted, would carry out that directive.

Section-By-Section Summary. Amendments to §367.14, concerning Processing Complaints, require the Board's Director of Enforcement to determine the priority of a complaint, and assign an investigation priority number. The priority number ranges from 1 - 3, with a lower number indicating a more serious violation deserving of investigation before investigation of a complaint with a higher number. A new subsection (d) is added establishing the criteria by which the investigation priority number is determined.

Amendments to §367.15, concerning Investigating Complaints, require that complaints be investigated in accordance with their priority investigation number; i.e., complaints with a lower in-

vestigation priority number posing a more serious threat to the public will be investigated before complaints having a high priority number. The foregoing notwithstanding, subsection (c)(5) allows for the simultaneous investigation of a complaint with a higher investigation priority number when doing so would result in administrative gains, but only to the extent it would not expose the public to additional risk of harm. One item expressly stated in the recommendation adopted by Sunset and prompting this proposal concerns the Board's activities in conducting on-site compliance checks (a/k/a jobsite compliance checks) in accordance with §1301.203(b)(1) of the PLL, where a Field Investigator for the Board visits locations where plumbing services are being provided to detect violations of the PLL. Amended §367.15 relegates such on-site compliance checks to occur only after complaints alleging serious harm to the public (those bearing a priority number 1 or 2) have been investigated. The foregoing notwithstanding, subsection (c)(6) allows the Field Investigator to conduct on-site compliance checks while "en route" to investigate a complaint, but only to the extent doing so would not expose the public to additional risk of harm.

Fiscal Impact on State and Local Government. Lisa G. Hill, Executive Director, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the rules.

Public Benefits / Costs to Regulated Persons. The Executive Director has determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to have rules refining and more clearly delineating the Board's current processes and procedures for prioritizing complaints. Formal rules will promote uniformity in processing and prioritizing complaints, ensuring that the Board is responding appropriately to complaints alleging potential harm to the public. Uniform assignment of an investigation priority number will provide additional metrics for the Board to consider when evaluating its complaint investigations functions.

The Executive Director has further determined that for the first five years the rules are in effect, there are no costs anticipated for persons required to comply with the rules.

One-for-One Rule Analysis. Given the rules do not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, the Board asserts proposal and adoption of the rules is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement. For each of the first five years the proposed amendments are in effect, the agency has determined the following: (1) the rules do not create or eliminate a government program; (2) implementation of the rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rules does not require an increase or decrease in future legislative appropriations to the agency; (4) the rules do not require an increase or decrease in fees paid to the agency; (5) the rules create a new regulation, but one governing the internal processes of the agency only, and do not impose a new regulation on persons regulated by the Board; (6) the rules may be regarded as an expansion of current regulations regarding prioritization of complaints, but do not limit an existing regulation; (7) the rules do not increase or decrease the number of individuals subject to the rules' applicability; and (8) the rules do not positively or adversely affect the state's economy.

Local Employment Impact Statement. The Executive Director has determined that no local economies are substantially affected by the rules, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities. The Executive Director has determined that the rules will not have an adverse effect on small or micro-businesses, or rural communities, because there are no anticipated costs to persons who are required to comply with the rules. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, is not required.

Takings Impact Assessment. The Board has determined that there are no private real property interests affected by the rules; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis. The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

Public Comments. Written comments regarding the amendments may be submitted by mail to Lisa G. Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line "Public Comment - Prioritization of Complaints." All comments must be received within 30 days of publication of this proposal.

Statutory Authority. This proposal is made under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law or PLL). This proposal affects the Plumbing License Law. No other statute is affected by this proposal.

Amended §367.14 is proposed under the authority of, and to implement, §1301.303 of the PLL.

Amended §367.15 is proposed under the authority of, and to implement, §§1301.203 and 1301.303 of the PLL.

§367.14. Processing Complaints.

(a) The Director of Enforcement will ~~[shall]~~ review a complaint submitted in accordance with §367.13 of this title to determine whether the Board has ~~[had]~~ jurisdiction.

(b) If it is determined that a complaint is within the Board's jurisdiction the Director of Enforcement will ~~[shall]~~:

- (1) assign a complaint number; ~~[and]~~
- (2) assign an investigation priority number; and ~~[appoint a Field Representative to investigate the complaint.]~~
- (3) appoint a Field Representative to investigate the complaint.

(c) If it is determined that a complaint is not within the Board's jurisdiction, the Director of Enforcement will ~~[shall]~~ notify the complainant of that determination, in writing.

(d) The investigation priority number for purposes of subsection (b)(2) of this section will range from Priority 1 to Priority 3, with a lower number indicating a more serious violation deserving of investigation before investigation of matters with a higher number, determined as follows:

(1) Priority 1 - Complaints alleging bodily injury or the imminent threat of harm to the public's health, safety or economic welfare, or the environment. The following matters will be classified as Priority 1:

(A) Combustible fuel gases. Complaints alleging or involving combustible fuel gases, such as improperly installed fuel gas lines, fuel-gas-fired appliances or water heaters, gas leaks, explosions, or unlicensed, unsupervised or unpermitted plumbing work involving combustible fuel gas which has not otherwise been subjected to and passed an inspection by a Plumbing Inspector;

(B) Medical gas. Complaints alleging or involving improperly installed, or unpermitted medical gas plumbing, or unlicensed, unsupervised or un-credentialed individuals installing medical gas plumbing which has not otherwise been subjected to and passed an inspection by a Plumbing Inspector;

(C) Contamination of potable water; illness or disease. Complaints alleging or involving cross-connections or other incursions of sewage or substances of unknown origin into the potable water supply. Complaints alleging or involving illness or disease attributable to a plumbing system or suspected of being transmitted by a plumbing system;

(D) Uninhabitable primary residence or business. Complaints alleging or describing the ongoing substantial impairment of the enjoyable use of a building used as a primary residence or the facility of a business and used for its day-to-day operations, due to the plumbing system, and arising from the alleged violation;

(E) Major environmental spills. Complaints alleging substantial release of effluent from a plumbing system and contamination or threatened contamination of a freshwater body; and

(F) Habitual offender. Complaints alleging a violation by a person having a recent history of past violations and for whom expedient injunctive relief may be required to obtain compliance.

(2) Priority 2 - Complaints which allege the occurrence of economic damages, but not bodily injury, and that do not allege an ongoing condition which poses an imminent threat of harm to the public's health, safety or economic welfare, or the environment. The following matters in particular will be classified as Priority 2:

(A) Harmful condition resolved. Complaints alleging a harmful condition of a plumbing system that, at one time, may have posed the threat of bodily injury or economic harm, and may have actually caused economic harm, but has since been resolved, typically by the alleged offender, or a subsequent plumber who remedied the potentially harmful condition;

(B) Economic injury only, with no ongoing threat of harm. Complaints alleging economic harm, but not bodily injury, and for which the nature of the violation never posed the threat of such bodily injury; and, which no longer poses an imminent threat of further economic harm. For example, evading responsibility to a client (thereby requiring the consumer to obtain replacement services), misrepresentation of services provided, general dissatisfaction with workmanship but not affecting the function of the plumbing system, improper billing practices, or the improper retention of money or materials;

(C) Unlicensed work inspected by a Plumbing Inspector. Complaints alleging unlicensed plumbing work for which a

plumbing permit is nevertheless obtained and passes an inspection by a Plumbing Inspector, indicating the plumbing system is reasonably safe for use;

(D) Unsupervised work by a registrant, without inspection. Complaints alleging plumbing work performed by a Plumber's Apprentice that was performed without the requisite level of supervision, and has not otherwise been subjected to and passed an inspection by a Plumbing Inspector;

(E) Failure to obtain plumbing permit by a licensee. Complaints alleging work performed by a licensee fit to perform the work but for which a plumbing permit was not obtained as required by the local authority having jurisdiction, and a plumbing inspection never conducted to ensure compliance with applicable plumbing codes; and

(F) Requests from local authorities or for interagency assistance. Complaints made by, or requests for assistance from, a local authority having jurisdiction such as a Plumbing Inspector or building official on behalf of a municipality or utility district, a Fire Marshall, or another representative of a governmental unit.

(3) Priority 3 - Complaints not classified as Priority 1 or Priority 2 will be classified as Priority 3. The following matters in particular will be classified as Priority 3:

(A) Unsupervised work by a registrant, with inspection. Complaints alleging work performed by a Plumber's Apprentice that was performed without requisite supervision, but was subjected to and passed an inspection by a Plumbing Inspector;

(B) Late permit by a licensee. Complaints alleging work performed by a licensee who failed to timely obtain a permit, but which was thereafter permitted and inspected by a Plumbing Inspector;

(C) No proof of violation. Complaints alleging a violation within the Board's jurisdiction but that fail to allege a factual basis for the alleged violation or otherwise indicate an inability to obtain credible evidence to support the alleged violation; and

(D) Class B Violations. Any matter alleging only a violation which is classified as a Class B violation for purposes of the Board's penalty schedule, adopted by Board Rule §367.17.

(4) A complaint alleging multiple violations will be assigned the lowest applicable investigation priority number.

(5) The Director of Enforcement may conduct an initial investigation of the complaint for purposes of determining the appropriate investigation priority number, prior to appointing a Field Representative to formally investigate the matter.

(6) The Director of Enforcement may re-classify the complaint and assign a different investigation priority number at any time within their sole discretion, when investigation of the complaint indicates it should be reassigned, either as a higher priority, or a lower priority, in accordance with the criteria set forth in subsection (d) of this section.

§367.15. Investigating Complaints.

(a) Purpose and Reference to Applicable Law. This section implements the Board's processes and procedures for investigating complaints alleging violations of the PLL or Board Rules in accordance with §1301.304 of the Plumbing License Law (PLL). The Board will investigate complaints from the public validly filed in accordance with Board Rule §367.13. The Board may also open a complaint investigation on its own initiative. This section also implements the Board's investigative procedures for prioritizing the investigation of complaints in accordance with §1301.303(e) of the PLL.

(b) The Board may utilize its Field Representatives, Director of Enforcement or Enforcement Committee, as appropriate, to investigate an alleged violation of the Plumbing License Law or Board Rules by a person who:

(1) is registered or licensed under the PLL [Plumbing License Law];

(2) is the owner of a company subject to the PLL;

(3) performs plumbing without holding a registration or license under the PLL; or

(4) advertises or otherwise offers to perform plumbing work without holding a license under the PLL.

(c) Prioritization of Complaints. Field Representatives will prioritize the investigation of complaints filed with the Board above their other enforcement activities and duties. Specifically, complaints will be investigated based on the investigation priority number they are assigned in accordance with Board Rule §367.14(b)(2) of this title, as follows [~~Complaints shall be investigated in the order they are received by the agency unless the Director of Enforcement assigns a higher priority to a complaint based on~~]:

(1) Priority 1 complaints will be investigated before any other complaints, and will be investigated in order based upon the potential for harm to the public's health or safety, from greatest to least, as determined in the sole discretion of the Field Representative to whom the complaint is assigned, in consultation with the Director of Enforcement. [~~an existing condition that poses an immediate risk to public health, safety or property; or~~]

(2) Priority 2 complaints will be investigated before any Priority 3 complaints, and will be investigated in order based upon the potential for harm to the public's health or safety, from greatest to least, as determined in the sole discretion of the Field Representative to whom the complaint is assigned, in consultation with the Director of Enforcement [~~the possible loss of evidence that may occur if the complaint is investigated only in relation to the order that it was received~~].

(3) Priority 3 complaints will be investigated when there are not Priority 1 or Priority 2 cases open and pending and requiring active investigation by the Field Representative to whom they are assigned, except as provided by paragraph (5) of this subsection.

(4) The Field Representative will not conduct on-site license and registrations checks for so long as a Priority 1 or Priority 2 complaint to which they have been assigned is open and pending and requires active investigation by the Field Representative, except as provided by paragraph (6) of this subsection.

(5) The Field Investigator may investigate a complaint having a higher investigation priority number contemporaneously with the investigation of a lower investigation priority number; provided, the complaints arise from the same area or will otherwise result in gains in administrative efficiency without imposing substantial delays in investigating complaints with a lower investigation priority number that would expose the public to additional risk of harm, as determined in the sole discretion of the Field Representative, in consultation with the Director of Enforcement.

(6) The Field Investigator may conduct on-site license and registration checks contemporaneously with and en route to investigating a complaint; provided the Field Representative determines that said checks will not impose substantial delays in investigating complaints filed with the Board and will not expose the public to additional risk of harm, as determined in the sole discretion of the Field Representative, in consultation with the Director of Enforcement.

(d) Cooperation Required. Licensees and registrants must [shall] cooperate with the Board and its Field Representatives during the investigation of a complaint.

(e) Complaint Statistics. The Director of Enforcement will [shall] maintain an electronic or hard copy case file for each written complaint alleging a violation of the Plumbing License Law or Board Rules filed with the Board and determined to be within the Board's jurisdiction in accordance with Board Rule §367. The files are subject to the agency's record retention schedule and must include:

- (1) the source of the complaint;
- (2) the complaint and all documents submitted under §367.13(c)(5) of this title;
- (3) the date the complaint is received by the agency;
- (4) the investigation priority number assigned pursuant to §367.14(b)(2) this title [the evidence collected during the investigation of the complaint];
- (5) the evidence collected during the investigation of the complaint [the geographic area, including the name of any municipality and the county in which the conduct that is the subject of the complaint occurred];
- (6) the geographic area, including the name of any municipality and the county in which the conduct that is the subject of the complaint occurred [the name of each person contacted in relation to the complaint];
- (7) the name of each person contacted in relation to the complaint; [a summary of the results of the review or investigation of the complaint; and]
- (8) a summary of the results of the review or investigation of the complaint; and [an explanation of the reason the file was closed; if the agency closed the file without taking action other than to investigate the complaint.];
- (9) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint.

(f) The Director of Enforcement will [shall] review the statistical information available in the complaint files described in subsection (e) of this section to identify geographical areas of concern [problem areas of the state] where enforcement activities should be focused and make recommendations to the Enforcement Committee and the Executive Director for addressing such areas [the problems] utilizing the resources available to the agency.

(g) Following the investigation of a complaint, the Director of Enforcement will refer the findings of the investigation with recommendations for disposition of the complaint to the Enforcement Committee.

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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Iain Berry

Staff Attorney

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 936-5202

◆ ◆ ◆
22 TAC §367.20

The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 Texas Administrative Code §367.20.

Background and Purpose. In accordance with §1301.5071 of the Occupations Code, the Board conducts informal settlement conferences in an attempt to resolve complaints alleging violations of Chapter 1301 of the Occupations Code (Plumbing License Law or PLL) and Board rules. On January 9, 2019, the Texas Sunset Advisory Commission (Sunset), pursuant to §325.012 of the Government Code, adopted a recommendation directing the Board to amend its rules implementing §1301.5071 of the PLL, concerning such informal settlement conferences, to include specific provisions outlining the Board's procedures for said conferences, and identifying the circumstances when the Board refers matters to an informal settlement conference. The amendments, if adopted, would carry out that directive. The Board anticipates formal procedures and increased use of the informal settlement conference process will increase outcomes involving the payment of restitution to the consumer, the best possible result for the consumer, which can only occur by agreement and voluntary settlement by the respondent, as provided by §1301.5071(b) of the PLL.

Section-By-Section Summary. Amendments to §367.20, concerning Informal Conference; Violation of Law, Rule or Board Order, establishes formal procedures for informal settlement conferences. Subsection (a) describes the Board's policy to resolve contested cases through voluntary settlement whenever possible. Subsection (b) requires the Board's Director of Enforcement to consider whether to refer a contested case to an informal settlement conference anytime the respondent timely requests an adjudicative hearing at the State Office of Administrative Hearings (SOAH), and establishes criteria for making that determination. Subsection (c) establishes certain types of contested cases that are deemed to be inappropriate for the informal settlement conference process. Subsection (d) provides that a party may make a request for an informal settlement conference. Subsection (e) requires the Board to provide at least thirty days' written notice of the informal settlement conference. Subsection (f) requires the respondent to submit various materials ten days in advance of the informal settlement conference, to allow the Board to process and consider such materials in advance of the conference. Subsection (g) establishes the required contents for serving notice of the informal settlement conference required by subsection (e), including providing the respondent with a copy of the investigation report reviewed by the Board in making its decision in the contested case. Subsection (h) describes the methods by which the respondent may appear at the informal settlement conference, which allows for appearances by phone. Subsection (i) describes the manner in which the Board will attend the informal settlement conference, to dispel any notion that the conference will be attended by Board members. Subsection (j) provides that a third party may be invited to the informal settlement conference. Subsection (k) provides that a record of the conference be made by the Board. Subsection (l) directs Board staff to prepare a final order for consideration by the Board in the event a proposed settlement is established as a result of the conference.

Fiscal Impact on State and Local Government. Lisa G. Hill, Executive Director, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for the state

or local governments as a result of enforcing or administering the rule.

Public Benefits / Costs to Regulated Persons. The Executive Director has determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to have better disclosure of the Board's procedures for informal settlement conferences, and increased resolution of contested cases by voluntary settlement, obviating the need for some costly adjudicative hearings, and improving outcomes for consumers filing complaints with the Board by increasing the use of restitution payments.

The Executive Director has further determined that for the first five years the rule is in effect, there are no costs anticipated for persons required to comply with the rule.

One-for-One Rule Analysis. Given the rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, the Board asserts proposal and adoption of the rule is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement. For each of the first five years the proposed amendments are in effect, the agency has determined the following: (1) the rule does not create or eliminate a government program; (2) implementation of the rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase or decrease in fees paid to the agency; (5) the rule creates a new regulation for informal settlement conferences for respondents requesting an adjudicative hearing that are referred to the informal settlement conference process; (6) the rule does not expand or limit an existing regulation; (7) the rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the rule does not positively or adversely affect the state's economy.

Local Employment Impact Statement. The Executive Director has determined that no local economies are substantially affected by the rule, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities. The Executive Director has determined that the rule will not have an adverse effect on small or micro-businesses, or rural communities, because there are no anticipated costs to persons who are required to comply with the rule. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment. The Board has determined that there are no private real property interests affected by the rule; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis. The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an

environmental impact analysis, as provided by said §2001.0225, is not required.

Public Comments. Written comments regarding the amendments may be submitted by mail to Lisa G. Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line "Public Comment - Informal Settlement Conferences." All comments must be received within 30 days of publication of this proposal.

Statutory Authority. This proposal is made under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law or PLL).

Amended §367.20 is proposed under the authority of, and to implement, §1301.5071 of the PLL.

Amended §367.20 is also proposed under the authority of Chapter 2009 of the Government Code and Chapter 154 of the Civil Practice and Remedies Code.

This proposal affects the Plumbing License Law. No other statute is affected by this proposal.

§367.20. Informal Settlement Conference [; Violation of Law, Rule or Board Order].

(a) Purpose and Reference to Applicable Law. It is the policy of the Board to resolve contested cases efficiently by informally disposing of matters by agreement and voluntary settlement whenever possible, to the extent such settlement is aligned with and will advance the Board's regulatory functions. This section implements the Board's processes and procedures for effectuating informal disposition of contested cases, including procedures for conducting Informal Settlement Conferences, pursuant to §1301.5071 of the PLL. For the foregoing reasons, and in order to advance the State's policy goals expressed in Chapter 2009 of the Government Code (Governmental Dispute Resolution Act) and Chapter 154 of the Civil Practice and Remedies Code to resolve disputes as fairly and expeditiously as possible, contested cases that the Board determines are capable of being resolved by informal disposition and voluntary settlement will be referred to an Informal Settlement Conference to seek such resolution [In addition to the respondent, the Enforcement Committee may invite the complainant or a third party with information relevant to the investigation to attend an informal conference].

(b) Referral to Informal Settlement Conference (ISC). In the event an individual makes a timely request for an adjudicative hearing in accordance with §1301.704 of the PLL and Board Rule §367.19(f), prior to the Board docketing the matter at SOAH and setting such hearing, the Director of Enforcement will determine whether to refer the matter to an Informal Settlement Conference in accordance with this section. In making such determination, the Director of Enforcement will consider [Not less than ten (10) days prior to the informal conference, the Director of Enforcement shall provide the respondent with a written notice informing the respondent]:

(1) whether the complainant or the respondent has requested an ISC in accordance with subsection (d) of this section [of the date, time, and location of the informal conference];

(2) if an ISC is requested by the respondent, whether the request appears to have been brought in bad faith or for purposes of delay rather than to resolve the matter; [that the respondent's participation is voluntary]

(3) the extent to which the contested case involves factual matters in dispute [that the respondent's participation is not a prerequisite to a formal hearing];

(4) the extent to which a complainant or other party has suffered damages that may be compensated through the payment of restitution, in accordance with §1301.5071 of PLL [that the respondent may be represented by legal counsel];and

(5) in cases in which the Board seeks to suspend or revoke a license, registration or endorsement, the extent to which probationary restrictions might present a viable alternative to suspension or revocation. [the nature of the alleged violation; and]

~~[(6) the names of any other individual invited to attend the conference.]~~

(c) Non-referral to Informal Settlement Conference. The following contested cases are ineligible for and will not be referred to an ISC: [If the informal conference results in the Enforcement Committee and the respondent entering into an agreed settlement that includes restitution payments, action on the respondent's license or registration, the payment of an administrative penalty or any other disciplinary action permitted by law, or combination of disciplinary actions, the Committee shall prepare an Agreed Final Order to be presented to the Board for adoption.]

(1) cases in which the Board is seeking denial of an application for a license, registration or endorsement, or to take an examination; and

(2) cases concerning a determination, following a request for preliminary review of an individual's criminal background, that an individual is ineligible for licensure.

(d) Request for Informal Settlement Conference. A complainant or the respondent may request to refer an eligible matter to an Informal Settlement Conference by making a written request delivered to the Board. A request for an ISC is a factor to be considered by the Director of Enforcement in determining whether to refer the contested case to an ISC, but will not automatically result in referral to an ISC [If the informal conference fails to result in an agreed settlement, the Enforcement Committee shall set a formal hearing on the matter as a contested case at SOAH if the respondent requests a hearing].

(e) Notice of Informal Settlement Conference. If a contested case is referred to an ISC, the respondent will be provided with at least thirty (30) days' written notice of the ISC. The Board will contact the respondent and any other party invited to attend for purposes of attempting to set the date and time for the ISC by agreement.

(f) Submission of Informal Settlement Conference Materials. At least ten (10) days in advance of the Informal Settlement Conference, the respondent must:

(1) submit all documentary evidence to be considered by the Board at the Informal Settlement Conference not already contained in the investigation report submitted by the Board's Field Investigator and reviewed by the Board in initiating the contested case;

(2) submit any written accounts or witness statements of the respondent, or any third parties, relevant to the matter, that the respondent would like the Board to consider, signed and dated, and sworn under oath or made by unsworn declaration in accordance with Chapter 132 of the Civil Practice and Remedies Code; and

(3) to the extent the respondent is represented by an attorney, submit a letter of representation from the attorney asserting said representation.

(g) Contents of Notice. The notice provided by subsection (e) of this section must include:

(1) the date and time scheduled for the Informal Settlement Conference;

(2) notification that the respondent may appear by any means authorized by this section, and need not personally attend;

(3) a list of all materials required to be filed with the Board in advance of the Informal Settlement Conference, in accordance with subsection (f) of this section, and the date by which the materials must be filed;

(4) notice of any other individual invited to attend the Informal Settlement Conference;

(5) notification of the respondent's right to be represented by an attorney, at their expense;

(6) a copy of the investigation report submitted by the Board's Field Investigator and reviewed by the Board in initiating the contested case, redacted to be compliant with Chapter 552 of the Government Code (Public Information Act); and

(7) a form with which to provide written accounts or witness statements, including instructions on how to complete the document to comply with subsection (f)(2) of this section.

(h) Appearance at an Informal Settlement Conference. Appearance at an Informal Settlement Conference may be in person or by phone. The Board may conduct the Informal Settlement Conference by video conferencing to the extent it is determined by the Executive Director or Director of Enforcement to be technically feasible and allowable.

(i) Appearance by the Board. An Informal Settlement Conference is not a meeting of the members of the Board, and will not be attended by Board members. The Executive Director and/or the Director of Enforcement will attend and will preside over the Informal Settlement Conference. An attorney on the Board's staff will also attend the Informal Settlement Conference. The Field Investigator who investigated the complaint may attend, in addition to any other Board staff whose appearance may be helpful, as determined by the Executive Director or the Director of Enforcement.

(j) Invitation of the Complainant or Third Parties. The Board may invite the complainant or a third party with information relevant to the investigation to attend the Informal Settlement Conference.

(k) Format; Record. At the Informal Settlement Conference, Board staff will review the materials submitted by the respondent in accordance with subsection (f) of this section. Board staff will question the respondent concerning any matters deemed relevant to investigating and resolving the matter. The respondent will be given an opportunity to be heard by Board staff to present their case. The Respondent should be prepared to identify any defenses or mitigating factors weighing in favor of a lesser penalty or other form of discipline sought by the Board. A record of the proceeding may be taken as determined in the discretion of the Executive Director or Director of Enforcement, including by audio or video recording. To the extent a record is made, the Board will notify the respondent of that fact. A copy will be provided to the respondent, upon written request. Admissions made by the respondent at the ISC may be used at a formal adjudicative hearing at SOAH, if applicable.

(l) Proposed Settlement; Agreed Final Order. To the extent Board staff and the respondent agree in principle to a proposed resolution of the contested case that includes payment of restitution, action on the respondent's license or registration, the payment of an adminis-

trative penalty or any other disciplinary action, or combination of disciplinary actions, the Board will prepare an Agreed Final Order capturing the terms of the proposed settlement, to be presented to the Board for consideration and possible adoption. To the extent restitution payments are proposed, the amount of the restitution will be included in the Agreed Final Order, the payee of the restitution payments will be specifically named, and their last known address listed, in such Agreed Final Order.

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 March 22, 2019.

TRD-201900864

Iain Berry

Staff Attorney

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 936-5202



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.82

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.82, concerning Advertising.

Background, Justification and Summary

The amendment to §501.82 requires that licensees use the name listed on their certificate or license when offering or performing accounting services and report name changes to the Board within 30 days of the name change

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed amendment will make it easier for the public to determine whether an individual is licensed by this Board to offer or perform accounting services.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 6, 2019.

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 Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.82. Advertising.

(a) A person shall not use or participate in the use of:

(1) any communication having reference to the person's professional services that contains a false, fraudulent, misleading or deceptive statement or claim; [nøf]

(2) any communication that refers to the person's professional services that is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct; nor [-]

(3) a name that is misleading as to the identity of the individual practicing under such name.

(b) Definitions:

(1) A "false, fraudulent, misleading or deceptive statement or claim" includes, but is not limited to, a statement or claim which:

(A) contain a misrepresentation of fact;

(B) is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

(C) is intended or likely to create false or unjustified expectations of favorable results;

(D) implies educational or professional attainments or licensing recognition not supported in fact;

(E) represents that professional accounting services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional accounting services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged;

(F) contains other representations or implications that in reasonable probability will cause a reasonably prudent person to misunderstand or be deceived;

(G) implies the ability to improperly influence any court, tribunal, regulatory agency or similar body or official due to some special relations;

(H) consists of self-laudatory statements that are not based on verifiable facts;

(I) makes untrue comparisons with other accountants; or

(J) contains testimonials or endorsements that are not based upon verifiable facts.

(2) Broadcast--Any transmission over the airwaves or over a cable, wireline, Internet, cellular, e-mail system or any other electronic means.

(3) Coercion--Compelling by force so that one is constrained to do what his free will would otherwise refuse.

(4) Compulsion--Driving or urging by force or by physical or mental constraint to perform or forbear from performing an act.

(5) Direct personal communication--Either a face-to-face meeting or a conversation by telephone.

(6) Duress--Any conduct which overpowers the will of another.

(7) Harassing--Any word, gesture, or action which tends to alarm and verbally abuse another person.

(8) Intimidation--Willfully to take, or attempt to take, by putting in fear of bodily harm.

(9) Overreaching--Tricking, outwitting, or cheating anyone into doing an act which he would not otherwise do.

(10) Threats--Any menace of such a nature and extent as to unsettle the mind of anyone on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent.

(11) Vexatious--Irritating or annoying.

(c) It is a violation of these rules for a person to persist in contacting a prospective client when the prospective client has made known to the person, or the person should have known the prospective client's desire not to be contacted by the person.

(d) In the case of an electronic or direct mail communication, the person shall retain a copy of the actual communication along with a list or other description of parties to whom the communication was distributed. Such copy shall be retained by the person for a period of at least 36 months from the date of its last distribution.

(e) Subsection (d) of this section does not apply to anyone when:

(1) the communication is made to anyone who is at that time a client of the person;

(2) the communication is invited by anyone to whom it was made; or

(3) the communication is made to anyone seeking to secure the performance of professional accounting services.

(f) In the case of broadcasting, the broadcast shall be recorded and the person shall retain a recording of the actual transmission for at least 36 months.

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 March 22, 2019.

TRD-201900853

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-7842



SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.91

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.91, concerning Reportable Events.

Background, Justification and Summary

The amendment to §501.91 requires licensees to report settlements and any terms, conditions and allegations of unappealable adverse findings, agreed consent orders, or agreed settlements, as they relate to professional accounting work or criminal activity, to the Board for its examination and confidentiality agreements will not eliminate the requirement to report to the board.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed amendment will make it clear when licensees are required to report events that may affect their license.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 6, 2019.

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; and finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.91. Reportable Events.

(a) A licensee or certificate holder shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee or certificate holder has knowledge of these events:

(1) the filing of criminal charges or the conviction or imposition of deferred adjudication of the licensee or certificate holder of [any of the following]:

(A) a felony;

(B) a crime of moral turpitude as listed in §519.7(2) of this title (relating to Misdemeanors that Subject a Licensee or Certificate Holder to Discipline by the Board);

(C) a ~~any~~ crime of which fraud or dishonesty is an element as listed in §519.7(1) of this title; ~~[or that involves alcohol abuse or controlled substances; and]~~

(D) a crime that involves alcohol abuse or controlled substances as listed in §519.7(3) of this title;

~~[(D) any crime related to the qualifications, functions, or duties of a public accountant or CPA, or to acts or activities in the course and scope of the practice of public accountancy or as a fiduciary;]~~

(E) a crime of physical injury or threats of physical injury to a person as listed in §519.7(4) of this title; or

(F) a crime related to the qualifications, functions, or duties of a public accountant or CPA, or to acts or activities in the course and scope of the practice of public accountancy or as a fiduciary.

(2) the cancellation, revocation, or suspension or a voluntary consent decree of the right to practice as a CPA or a public accountant by ~~[before]~~ any governmental body or agency or state, foreign country, or other jurisdiction for a reason other than the failure to pay the appropriate authorization fee;

(3) an unappealable adverse finding in any state or federal court, ~~[or]~~ an agreed settlement in a civil action against the licensee or certificate holder, ~~or an agreed consent order or settlement with a regulatory authority or licensing body concerning professional accounting services or professional accounting work; [or a finding of a breach of fiduciary duty, fraud or misappropriation; or]~~

(4) a negotiated settlement evidencing deficient accounting services; or

(5) ~~[(4)]~~ the revocation, suspension, or voluntary consent decree ~~[or any limitation on a professional license]~~ from any state or federal regulatory agency such as an insurance license or a securities license, resulting from an unappealable adverse finding.

(b) The report required by subsection (a) of this section shall be signed by the licensee or certificate holder and shall set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

(c) Nothing in this section imposes a duty upon any licensee or certificate holder to report to the board the occurrence of any of the

events set forth in subsection (a) of this section either by or against any other licensee or certificate holder.

(d) As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not be actually imposed until all appeals are exhausted.

(e) Confidentiality provisions in the terms of any settlement of the reportable events described in subsection (a) of this section shall not limit the licensee or certificate holder's obligation to report such event and to cooperate fully with the board in any investigation.

(f) [(e)] Interpretive Comment: A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community and further defined in §501.90(18) of this title (relating to Discreditable Acts) and §519.7 of this title [(relating to Discreditable Acts and Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board)].

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



CHAPTER 511. ELIGIBILITY

SUBCHAPTER B. CERTIFICATION BY EXAMINATION

22 TAC §511.22

The Texas State Board of Public Accountancy (Board) proposes amendments to §511.22, concerning Initial Filing of the Application of Intent.

Background, Justification and Summary

The amendments to §511.22 delete the requirement for notarizing or certifying certain documents and clarify that examination applications will no longer be mailed, as they are available on the Board's website.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendments are in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendments.

Public Benefit

The proposed amendments will be a more effective, timely and streamlined application process.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendments, and a Local Employment Impact Statement is

not required because the proposed amendments will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendments will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendments do not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendments are in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency (§2001.0045(c)(8)).

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 6, 2019.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendments 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 Texas Government Code, §2006.002(c).

Statutory Authority

The amendments are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by these proposed amendments.

§511.22. *Initial Filing of the Application of Intent.*

(a) The initial filing of the application of intent shall be made on forms prescribed by the board and shall also be in compliance with board rules and with all applicable laws. The application of intent may be submitted at any time and will be used to determine compliance and eligibility for an applicant to take the UCPAE. The application of intent will remain active until:

(1) an applicant takes at least one section of the UCPAE within two years from the date of submission of the application; or

(2) the second anniversary of the submission of the application has lapsed.

(b) Each applicant shall submit their social security number on the application form. Such information shall be considered confidential and can only be disclosed under the provisions of the Act.

(c) Each applicant who submits an application of intent to determine eligibility for the UCPAE must pay a nonrefundable filing fee in accordance with §521.12 of this title (relating to Filing Fee). An application of intent not accompanied by the proper fee or required documents shall not be considered complete. The withholding of information, a misrepresentation, or any untrue statement on the application or supplemental documents will be cause for rejection of the application.

(d) Each applicant must provide official educational documents to be used in determining compliance with the applicable education requirements of the Act.

(e) Each applicant must comply with the board's procedure to investigate the moral character of applicants in accordance with an established fingerprint process that accesses the Federal Bureau of Investigation (FBI) database and the Texas Department of Public Safety-Crime Records division files.

(f) Each applicant will be notified when all requirements have been met to apply to take the UCPAE, and with the notification, an examination application will be made available [mailed] to the applicant.

(g) Each applicant must provide a [~~notarized or certified~~] copy of the following documents:

(1) Unexpired driver's license issued by a state of the United States provided it contains a photograph and information such as name, date of birth, sex, height, eye color, and address; or an unexpired United States passport; and

(2) social security card.

(h) Applicants who are citizens of a foreign country and who cannot meet the requirements of subsection (g) of this section shall comply by providing evidence of a non-expired F-1 Visa issued to students attending a university or college. The board may consider an F-1 Visa with a Certificate of Eligibility for Nonimmigrant Student Status. Form I-20 shall be approved by the designated school official at the educational institution where the applicant is currently attending.

(i) Applicants who cannot meet the requirements of subsection (g) or (h) of this section may be eligible to take the UCPAE by providing evidence of both identity and employment authorization by submitting a [~~notarized or certified~~] copy of one of the following unexpired documents:

(1) An Alien Registration Receipt Card or Permanent Resident Card (Form I-551); or

(2) A foreign passport that contains a temporary I-551 stamp, or temporary I-551 printed notation on a machine-readable immigrant visa; or

(3) An Employment Authorization Document which contains a photograph (Form I-766).

(j) Applicants who do not have or do not submit a social security card will be required to pay an additional fee to NASBA each time they make application for the UCPAE to verify their legal entry into the U.S.

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



SUBCHAPTER D. CPA EXAMINATION

22 TAC §511.72

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.72, concerning Uniform Examination.

Background, Justification and Summary

The amendment to §511.72 clarifies that the CPA exam no longer has limited times, i.e. testing windows, that they may take the exam.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed amendment clarifies the testing process for CPA candidates.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed

rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 6, 2019.

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 Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.72. Uniform Examination.

(a) The board shall contract with NASBA for the administration of the UCPAE, in conjunction with the AICPA and a test vendor. The examination may be offered at the board's office and at testing facilities within the state that are approved and monitored by the board or its designee. The examination shall be offered [during scheduled months] as determined by the AICPA, NASBA, and the testing vendor.

(b) The board shall utilize the UCPAE available from the AICPA covering the following sections:

- (1) auditing and attestation;
- (2) business environment and concepts;
- (3) regulation; and
- (4) financial accounting and reporting.

(c) An applicant taking the examination is required to have in their possession the Notice to Schedule form provided by NASBA, a government-issued form of identification containing a photograph of the applicant, and a second form of identification such as a board-issued form.

(d) An applicant taking the examination shall sign a statement of confidentiality and conduct which the applicant must follow during the entire examination.

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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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SUBCHAPTER E. VENDOR REQUIREMENTS

22 TAC §511.102

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.102, concerning CPA Examination Availability.

Background, Justification and Summary

The amendment to §511.102 clarifies that the CPA exam no longer has limited times, i.e. testing windows, during which they may take the exam.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed amendment clarifies the testing process for CPA candidates.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randal (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 6, 2019.

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 Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.102. CPA Examination Availability.

The examination will be available at test centers on designated days and at designated times [during testing windows] throughout the year.

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

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J. Randal (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to 22 TAC §519.2, concerning Definitions.

Background, Justification and Summary

The amendment to §519.2 adds the definition for "Contested Case" to track the Administrative Procedure Act.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed amendment will provide the public with greater access to the definition of a contested case proceeding which tracks the definition in the Administrative Procedure Act.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Legal Review

The Board's legal counsel has reviewed the rule and certified that the rule is within the state agency's authority to adopt. (§2001.024)

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 6, 2019.

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 Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.2. Definitions.

In this chapter:

- (1) "Address of record" means the last address provided to the board by a certificate or registration holder pursuant to §501.93 of this title (relating to Responses);
- (2) "ALJ" means SOAH administrative law judge;
- (3) "APA" means the Texas Administrative Procedure Act, Chapter 2001 of the Texas Government Code;
- (4) "Board staff" means the agency's employees;
- (5) "Committee" means an enforcement committee of the board;
- (6) "Complainant" means the person or entity who initiates a complaint with the board against a certificate or registration holder [~~"Complaint" means information available to or provided to the board indicating that a certificate or registration holder may have violated the Act, board rules, or order of the board~~];
- (7) "Complaint" means information available to or provided to the board indicating that a certificate or registration

holder may have violated the Act, board rules, or order of the board [~~"Complainant" means the person or entity who initiates a complaint with the board against a certificate or registration holder~~];

(8) "Contested case" means a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing;

(9) [~~(8)~~] "Direct Administrative Costs" means those costs actually incurred by the board through payment to outside vendors and the resources expended by the board in the investigation and prosecution of a matter within the board's jurisdiction, including but not limited to, staff salary, payroll taxes and benefits and other non-salary related expenses, expert fees and expenses, witness fees and expenses, filing fees and expenses of the support staff of the Office of the Attorney General, filing fees, SOAH utilization fees, court reporting fees, copying fees, delivery fees, case management fees, costs of exhibit creation, technical fees, travel costs and any other cost or fee that can reasonably be attributed to the matter;

(10) [~~(9)~~] "Petitioner" means the Texas State Board of Public Accountancy;

(11) [~~(10)~~] "PFD" means the proposal for decision prepared by an ALJ;

(12) [~~(11)~~] "Respondent" means a licensee or certificate holder, individual or entity against whom a complaint has been filed; and

(13) [~~(12)~~] "SOAH" means the State Office of Administrative Hearings.

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 March 22, 2019.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

22 TAC §519.29

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.29, concerning Voluntary Surrender of Certificate.

Background, Justification and Summary

The amendment to §519.29 clarifies the standards by which the board will evaluate a certificate holder's request to surrender their certificate and the effect of the surrender.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local govern-

ments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed amendment will be a clearer understanding of how a request for voluntary surrender will be evaluated.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 6, 2019.

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 Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.29. *Voluntary Surrender of Certificate.*

(a) Subject to board approval, a [A] certificate holder may voluntarily surrender his certificate by submitting a written statement of intent to voluntarily surrender the certificate. [Once a certificate holder has surrendered his certificate, he is no longer eligible to hold a license under §901.402 of the Act (relating to Eligibility Requirements; General Prohibition) and licensing exemptions will no longer apply.]

(b) The board may deny a certificate holder's application to voluntarily surrender his certificate in order for the board to initiate and complete an investigation of any of the reportable events identified in §501.91(a) of this title (relating to Reportable Events).

(c) Once a certificate holder has surrendered their certificate, they are no longer eligible to hold a license under §901.402 of the Act (relating to Eligibility Requirements; General Prohibition) and licensing exemptions will no longer apply.

(d) ~~(b)~~ A former certificate holder who has voluntarily surrendered his certificate under subsection (a) of this section may apply for a new certificate upon completion of the following requirements:

(1) evidence of completion of all CPE that would have been required to be completed up to a maximum of 120 hours over the three years immediately preceding the application including a four-hour board approved ethics course;

(2) a sworn affidavit in the form provided by the board stating that the former certificate holder has not been convicted of, placed on community supervision or accepted deferred adjudication for any felony crime or for any misdemeanor crime involving dishonesty, fraud, moral turpitude, alcohol abuse or controlled substances, or physical injury or threats of physical injury to a person under the laws of any state or the United States and that the former certificate holder did not surrender the certificate to avoid disciplinary action by the board or to avoid administrative revocation under board rules adopted pursuant to §§901.159, 901.411 or 901.502 of the Act (relating to Peer Review; Continuing Professional Education; or Grounds for Disciplinary Action); and

(3) payment of all fees that would have been paid if the former certificate holder's license had been active since the date of surrender and all applicable late fees.

(e) ~~(e)~~ A new certificate issued to a former certificate holder will bear the same certificate number as the original certificate.

(f) ~~(d)~~ If an individual, subject to the approval of the board, voluntarily surrenders and resigns the certificate or registration during the course of a disciplinary investigation or proceeding conducted by the board, this fact shall be disclosed in any later application for a new certificate, and shall be considered before the issuance of a new certificate.

(g) ~~(e)~~ A voluntary surrender is effective on the date of this agency's approval letter or other written notification. The voluntary surrender may be disapproved when doing so is in the best interest of the public. It is in the best interest of the public to deny a licensee's vol-

untary surrender prior to the adjudication of a board complaint, criminal charge or civil proceeding alleging fraud or dishonesty.

(h) [(f)] If a certificate holder voluntarily surrenders his certificate after being charged with a crime for which he subsequently receives a conviction or deferred adjudication, or voluntarily surrenders his certificate subsequent to the filing of a civil suit alleging fraud or dishonesty which subsequently results in a finding by a court of fraud or dishonesty, the voluntary surrender may be set aside by the board upon a finding by the board that the criminal or civil adjudication warrants 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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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7842



SUBCHAPTER D. PROCEDURES AFTER HEARING

22 TAC §519.72

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.72, concerning Final Decisions and Orders.

Background, Justification and Summary

The amendment to §519.72 eliminates the requirement of 20 days for a party to a contested case proceeding to file a motion for rehearing following a Board decision in order for the rule to comport with the requirements of the Administrative Procedure Act and to clarify that Board orders are not final until the period for filing a motion for rehearing has expired or the motion for rehearing has been overruled. It also specifically cites the applicable Section of 2001.058(e) of the Administrative Procedure Act regarding the Board changing the recommendation in a proposal for decision.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed amendment will be to clarify the process for contested cases heard by the Board.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 6, 2019.

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; and finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Legal Review

The Board's legal counsel has reviewed the rule and certified that the rule is within the state agency's authority to adopt. (§2001.024)

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.72. ~~[Final]~~ *Decisions and Orders.*

(a) All ~~[final]~~ decisions and orders of the board pertaining to a contested case shall be made during a public meeting duly noticed pursuant to the Chapter 551 of the Texas Government Code (relating to Open Meetings). The board's decisions and orders shall be in writing and reported in the minutes of the meeting. An ~~[A final]~~ order of the board shall include findings of fact and conclusions of law, separately stated.

(b) A copy of the ~~[final]~~ decision or order of the board shall be delivered or mailed to all parties or, if represented by counsel, to their attorney of record.

(c) The board may change a finding of fact or conclusion of law made by the ALJ, or may vacate or modify an order issued by the ALJ, only if the board determines:

(1) that the ALJ did not properly apply or interpret applicable law, agency rules, written policies provided to the ALJ with a written statement of applicable rules or policies, or prior administrative decisions;

(2) that a prior administrative decision on which the ALJ relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(d) If the board modifies, amends, or changes the ALJ's recommended order, an order shall be prepared reflecting the board's changes and the board's specific reason and legal basis for the changes.

(e) A ~~[final order or]~~ board decision or order is administratively final when:

(1) there is no filing of a timely motion for rehearing~~]; upon the expiration of 20 days from the date the final order or board decision is entered];~~ or

(2) a timely motion for rehearing is filed and the latest timely filed motion for rehearing is overruled ~~[denied]~~ by board order or operation of law.

(f) The board shall make the final decision in assessing the discipline provided for in §901.501 of the Act (relating to Disciplinary Powers of Board) and §519.41 of this chapter (relating to Disciplinary Powers of the Board).

(g) Interpretive comment. Section 2001.058(e) ~~[2001-058]~~ of the APA provides the standard ~~[standards]~~ that a governmental agency must follow in changing a recommendation of an ALJ of SOAH. Case law makes it clear that the standard ~~[standards]~~ must be strictly adhered to in order for the change to the recommendation to be valid. The above language in subsection (c) of this section addresses the required standards.

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 March 22, 2019.

TRD-201900859

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-7842

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SUBCHAPTER E. POST BOARD ORDER
PROCEDURES

22 TAC §519.91

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.91, concerning Judicial Review.

Background, Justification and Summary

The amendment to §519.91 reflects the title change of §519.72 to reflect the revision to the term final orders.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed amendment will reference the correct title to an existing rule.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 6, 2019.

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 Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.91. *Judicial Review.*

Once a board order has become administratively final under §519.72(e) of this chapter (relating to [Final] Decisions and Orders), a party aggrieved by the order may seek judicial review of the order in accordance with 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 March 22, 2019.

TRD-201900862

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-7842



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.112

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.112, concerning Required CPE Participation.

Background, Justification and Summary

The amendment to §523.112 recognizes CPE taken in other states as satisfying the Board's requirement for CPE.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed amendment will promote mobility among the states.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment, and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; does not expand, limit or repeal an existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on May 6, 2019.

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 Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.112. Required CPE Participation.

(a) A licensee shall complete at least 120 CPE credits in each three-year period, and a minimum of 20 CPE credits in each one-year period.

(b) CPE, except as provided by board rule, shall be offered by board-contracted CPE sponsors.

(c) CPE requirements for the issuance or renewal of a license are as follows:

(1) Licensees who have been certified or registered for less than 12 months do not have a CPE credit requirement. The first license period begins on the date of certification and ends with the last day of the licensee's birth month.

(2) To be issued a license for the first full 12-month license period, the licensee does not have a CPE requirement. CPE earned prior to the first 12-month license period will not be applied toward the three-year requirement.

(3) To be issued a license for the second full 12-month period, the licensee shall report a minimum of 20 CPE credits. The CPE credits shall be completed in the 12 months preceding the second year of licensing.

(4) To be issued a license for the third full 12-month license period, the licensee shall report a total of at least 60 CPE credits that were completed in the 24 months preceding the license period. At least 20 CPE credits of the requirement shall be completed in the 12 months preceding the third year of licensing.

(5) To be issued a license for the fourth full 12-month period, the licensee shall report a total of at least 100 CPE credits that were completed in the 36 months preceding the license period. At least 20 CPE credits of the requirement shall be completed in the 12 months preceding the fourth year of licensing.

(6) To be issued a license for the fifth and subsequent license periods, the licensee shall report a total of at least 120 CPE credits that were completed in the 36 months preceding the license period, and at least 20 CPE credits of the requirement shall be completed in the 12 months preceding the fifth year of licensing.

(d) A former licensee whose certificate or registration has been revoked for failure to pay the license fee and who makes application for reinstatement shall pay the required fees and applicable late fees and must report the minimum CPE credits missed.

(e) A non-resident licensee seeking renewal of a license in Texas shall be determined to have met the CPE requirement by meeting the CPE requirements for renewal of a certificate/license in the state in which the licensee's principal place of business is located.

(1) Non-resident licensees shall demonstrate compliance with the CPE renewal requirements of the state in which the licensee's principal place of business is located by signing a statement to that effect during the renewal process of this state.

(2) If a non-resident licensee's principal place of business state has no CPE requirements for renewal of a certificate/license, the non-resident licensee must comply with all CPE requirements for renewal of a certificate 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 March 22, 2019.

TRD-201900861

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 5, 2019

For further information, please call: (512) 305-7842



TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 73. BENEFITS

The Employees Retirement System of Texas (ERS) proposes an amendment to 34 Texas Administrative Code (TAC) Chapter 73, concerning Benefits, by repealing §73.9 (Additional Retirement Option) and amending §73.31 (Adjustment to Annuities).

As part of ERS' ongoing statutory responsibility to review its rules, the following amendment and repeal are proposed.

Section 73.9 is proposed to be repealed since this section is no longer necessary and is redundant. Section 73.9 was added in 1981 to implement Option 5 for a three-fourths annuity for a beneficiary, which existed only in rule for 27 years. Since §814.108(c)(5) of the Texas Government Code was added through Chapter 1308 (H.B. 2559), Acts of the 81st Legislature, Regular Session, 2009, it is no longer necessary as a rule.

Section 73.31 is proposed to be amended to remove a reference to a repealed statute, §814.1041 of the Texas Government Code. Section 46(5), Chapter 1111 (H.B. 2359), Acts of the 78th Legislature, Regular Session, 2003, repealed §814.1041 of the Texas Government Code effective September 1, 2003.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that for the first five years the amended rule is in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the rule will not require the creation or elimination of employee positions;

(3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;

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

- (5) the rule will not create a new rule or regulation;
- (6) the rule will repeal an existing rule or regulation;
- (7) the rule will not increase or decrease the number of individuals subject to the rule's applicability, and
- (8) the rule will not affect the state's economy.

Ms. Robin Hardaway, Director of Customer Benefits, has determined that for the first five-year period the rule is in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rule; and small businesses, micro businesses and rural communities will not be affected. The proposed rule does not constitute a taking. Ms. Hardaway has also determined that, to her knowledge, there are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Ms. Hardaway 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 would be to conform the rule to enacted legislation.

Comments on the proposed amendment and repeal may be submitted to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is May 6, 2019.

34 TAC §73.9

The repeal is proposed under the Texas Government Code, §815.102, which provides authorization for the ERS Board of Trustees to adopt rules for the administration of the funds of the retirement system and the transaction of any other business by the board.

No other statutes are affected by the proposed repeal.

§73.9. *Additional Retirement Option.*

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 March 19, 2019.

TRD-201900827

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Earliest possible date of adoption: May 5, 2019

For further information, please call: (877) 275-4377



34 TAC §73.31

The amendment is proposed under the Texas Government Code, §815.102, which provides authorization for the ERS Board of Trustees to adopt rules for the administration of the funds of the retirement system and the transaction of any other business by the board.

No other statutes are affected by the proposed amendment.

§73.31. *Adjustment to Annuities.*

(a) Annuities with an effective date before September 1, 2001, that are based on service retirements, disability retirements, or deaths

pursuant to the Government Code, Title 8, §§814.104, [814.1041,] 814.107, 814.206, 814.207, 814.301, 814.302, or 814.305, shall be adjusted pursuant to the provisions of §45 of Senate Bill 292, 77th Legislature, 2001.

(b) Any adjustment pursuant to this section must be made to all annuitants who are similarly situated.

(c) This section supersedes conflicting portions of existing plan provisions.

(d) Adjustments to annuities under this section must be in compliance with the Internal Revenue Code of 1986, §401(a) and the Government Code, Title 8, §811.006.

(e) Annuities based on service credited under Government Code, Title 8, §813.401, shall be adjusted to reflect the plan design changes provided by §814.105 that are effective September 1, 2001.

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 March 19, 2019.

TRD-201900826

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Earliest possible date of adoption: May 5, 2019

For further information, please call: (877) 275-4377



CHAPTER 82. HEALTH SERVICES IN STATE OFFICE COMPLEXES

34 TAC §82.3, §82.9

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 82, concerning Health Services in State Office Complexes, by amending §82.3 (Administration) and §82.9 (Termination).

In 2006, the ERS Board of Trustees (Board) established a nurse practitioner pilot program under Chapter 671, Texas Gov't Code. The on-site health services clinic pilot program provides basic medical care via a licensed advanced practice nurse, overseen by a licensed physician, to state employees who choose to make use of the services at the Texas Commission on Environmental Quality's headquarters in Austin, Texas. Chapter 671.001(c) authorizes the Board to adopt necessary rules.

Section 82.3 and §82.9, concerning Administration and Termination, are proposed to be amended to delegate authority to the executive director to allow ERS to work efficiently and effectively with interested state agencies to plan, establish, and operate proposed on-site clinics with potential medical and financial value to the plan. Since the origination of this rule more than a decade ago, the interest in and options available for on-site health clinics have altered dramatically. These rule changes are sought to allow ERS the ability to work responsively and comprehensively with state agencies, within the general policy direction provided by the Board.

GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that for the first five years the amended rule is in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the rules will not require the creation or elimination of employee positions;
- (3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not require an increase or decrease in fees paid to the agency;
- (5) the rules will not create a new rule or regulation;
- (6) the rules do expand authority under an existing rule (regulation);
- (7) the rules could increase or decrease the number of individuals subject to the rule's applicability, if additional on-site clinics are established; and
- (8) the rules will not affect the state's economy.

Mr. Keith Yawn, Director of Strategic Initiatives, has determined that for the first five-year period the rules are in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rule; and small businesses, micro-businesses and rural communities will not be affected. The proposed rule does not constitute a taking. Mr. Yawn has also determined, that to his knowledge, there are no known anticipated economic effects to persons who are required to comply with the rules as proposed.

Mr. Yawn also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be to allow ERS the ability to work responsively and comprehensively with state agencies to improve the efficiency of programs administered by ERS.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.texas.gov. The deadline for receiving comments is May 6, 2019, at 10:00 a.m.

The amendments are proposed under Texas Government Code, §671.001(c), which authorizes the Board to adopt rules necessary to implement the on-site health clinic program.

No other statutes are affected by the proposed amendments.

§82.3. *Administration.*

The board shall implement and administer all aspects of the pilot program and determine any future expansion or continuation of the pilot program as authorized by Chapter 671, Texas Government Code. This includes the authority to execute contracts as necessary, to establish operating procedures, hours of operation, applicable fees and co-payments, administrative costs, and all other administrative and operational functions for the pilot program. The executive director is vested with the authority to implement and make all administrative decisions related to the pilot program that are vested in the board, including the determination of any future expansion or continuation of the pilot program as authorized by Chapter 671, Texas Government Code, subject to the basic and general policies, rules and regulations and appellate jurisdiction of the board.

§82.9. *Termination.*

The board or executive director shall determine if the continued operation of any facility established under the pilot program is cost effective and beneficial to the participants of the GBP. The authority to continue or terminate a facility shall be determined by the board or executive director.

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 March 19, 2019.

TRD-201900825

Paula A. Jones

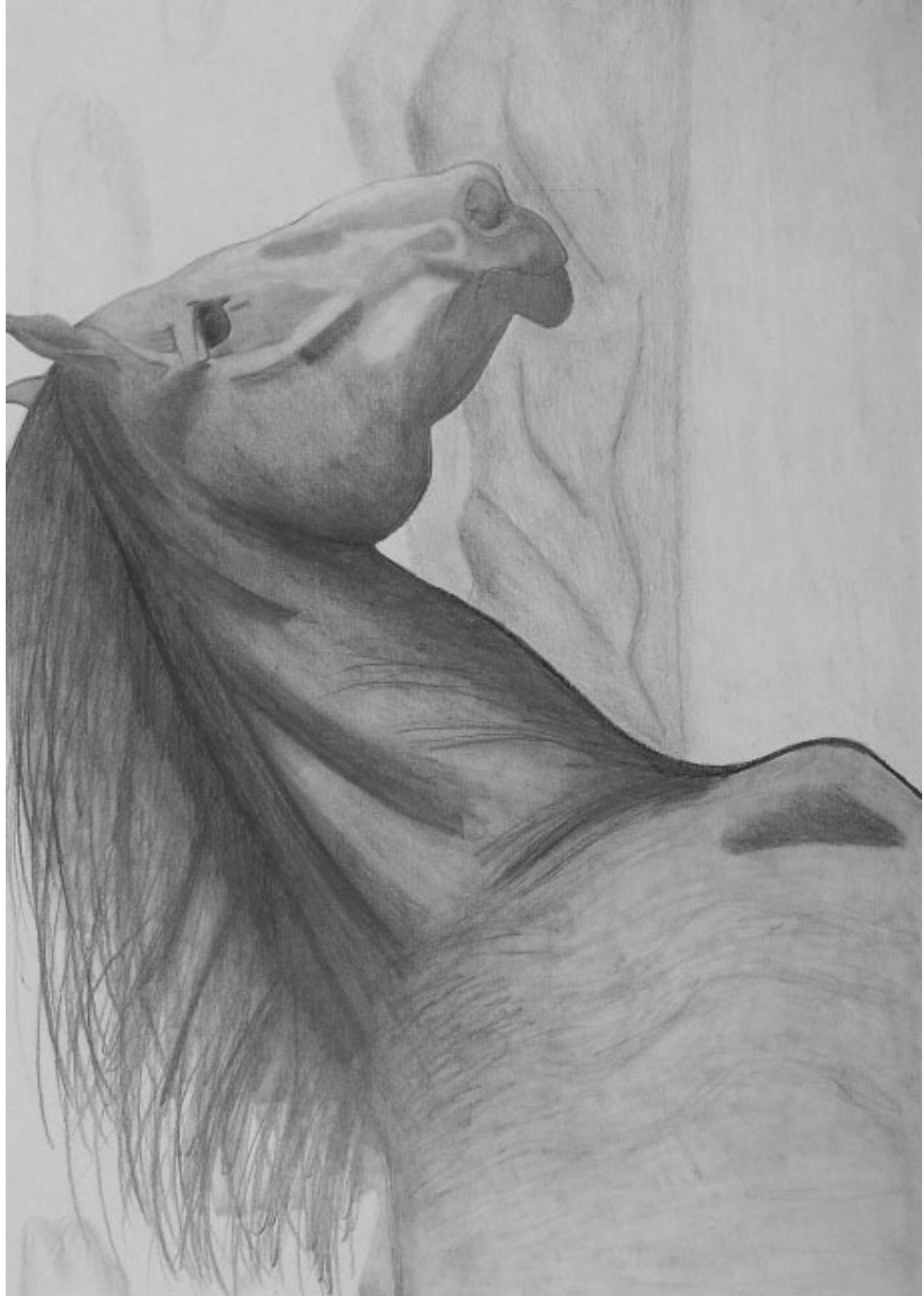
Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Earliest possible date of adoption: May 5, 2019

For further information, please call: (877) 275-4377





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 160. GENERAL ADMINISTRATION SUBCHAPTER A. VENDOR PROTESTS OF PROCUREMENTS

1 TAC §§160.1 - 160.6

The State Office of Administrative Hearings (SOAH) adopts new Chapter 160, Subchapter A, §§160.1 - 160.6, relating to agency administration, including vendor protests of agency procurements. The rules are adopted without changes to the proposed text as published in the February 15, 2019, issue of the *Texas Register* (44 TexReg 647), and will not be republished.

Reasoned Justification

The rules establish a new Chapter and Subchapter relating to general agency administration, and establish rules relating to vendor protests of procurements. The new rules are necessary to comply with Texas Government Code, §2155.076, which requires that each state agency, by rule, shall develop and adopt protest procedures for resolving vendor protests relating to purchasing issues. The proposed rule establishes a formal protest procedure to be used for resolving protests relating to purchasing issues.

Public Comments

No comments were received regarding the proposed rule.

Statutory Authority

The rule is adopted pursuant to Texas Government Code, §2155.076, which requires that each state agency, by rule, shall develop and adopt protest procedures for resolving vendor protests relating to purchasing issues.

No other statutes, articles, or codes are affected by the rule.

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 March 18, 2019.

TRD-201900820

Shane Linkous

General Counsel

State Office of Administrative Hearings

Effective date: April 7, 2019

Proposal publication date: February 15, 2019

For further information, please call: (512) 936-6624

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES SUBCHAPTER D. USE AND APPLICATION

4 TAC §7.41

The Texas Department of Agriculture (TDA or the Department) adopts new Title 4, Part 1, Chapter 7, Subchapter D, §7.41 of the Texas Administrative Code, concerning the Application of Coumaphos (Active Ingredient 42%), without changes to the proposal published in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6053). The new rule is adopted to ensure that users apply the product as required in accordance with the label which is approved by the U.S. Environmental Protection Agency (EPA).

On December 17, 2018, the Department held a public hearing to take comments on the proposed rule as required pursuant to §76.104 of the Texas Agriculture Code. The Department took written comments from witnesses and allowed verbal testimony on the proposal. Representatives from the Texas Animal Health Commission (TAHC), Texas and Southwestern Cattle Raisers Association, Texas Cattle Feeders Association, and Texas Farm Bureau presented verbal and written comments against the proposal. Daniel Davis, representing Cascabel Cattle Co., and Joe Stuckey presented verbal testimony on behalf of the proposal. Each of the witnesses also submitted written comments prior to the public hearing.

The comment period was open until November 30, 2018. In total, TDA received 154 written comments from state and federal agencies, industry groups, and members of the public.

Kevin Shea, as Administrator of the United States Department of Agriculture Animal and Plant Health Inspection Service, submitted a comment on behalf of the agency against the proposal. The USDA commented that TDA's interpretation of the EPA label for coumaphos was incorrect and suggested that the proposed rule would impose additional burdens on the USDA-TAHC Cattle Fever Tick Eradication Program (TCFTEP) which would frustrate Texas cattle producers' ability to participate in interstate and intrastate commerce. Dr. Shea disputed the Department's statement that there would be no adverse fiscal impact on industry as a result of the proposed rule change.

Andy Schwartz, Executive Director of the Texas Animal Health Commission submitted comments on the proposal on behalf of the agency against the proposal. Dr. Schwartz commented that

the Co-Ral® label [of which coumaphos is an active ingredient] provides use instructions which direct the applicator not to spray in a confined, non-ventilated area, making the proposal unnecessary. Additionally, Dr. Schwartz states that authority regarding use lies with EPA, as the label-issuing authority that regulates and registers coumaphos through the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Dr. Schwartz commented that the proposal would create negative fiscal impacts for rural Texas producers required to utilize alternative methods for treatment of cattle fever ticks.

Robert McKnight, Jr., President of the Texas and Southwestern Cattle Raisers Association submitted a comment on behalf of the industry association against the proposal. Mr. McKnight stated that the proposal is unnecessary and duplicative as the Co-Ral® label, as interpreted by EPA, currently provides restrictions which prevent application in confined or non-ventilated areas.

Levi Berry, Chairman of the Texas Cattle Feeders Association submitted a comment on behalf of the industry association against the proposal. Mr. Berry stated the proposal is a restatement of the restriction currently on the (Co-Ral®) product label and pesticide applicators are required to comply with product label, therefore making the new rule unnecessary. Mr. Berry also states that the Department's proposal is inconsistent with an EPA communication with APHIS that provided no indication that the protections on the product label related to livestock.

Tracy Tomascik, Associate Director for Commodity and Regulatory Activities, submitted comments on behalf of Texas Farm Bureau against the proposal. Mr. Tomascik stated that because there is currently an EPA label which is enforceable, pesticide applicators are required to comply with label requirements, and the rule does not create new regulations, the rule should be withdrawn to prevent disruption to the Texas cattle industry.

Rod Hall, State Veterinarian and Director of the Animal Industry Division of the Oklahoma Department of Agriculture, Food and Forestry submitted a comment on behalf of the agency, against the proposal. The Oklahoma Department of Agriculture is opposed to the rule as it would prevent the USDA and TAHC from having the tools necessary to effectively control the spread of cattle fever ticks. Without those tools, the repercussions could be the imposition of restrictions on Texas cattle from being imported into Oklahoma.

Jim Logan, Wyoming State Veterinarian, submitted comments on behalf of the Wyoming Livestock Board, against the proposal. Dr. Logan submitted comments that the adoption of the rule would prevent the USDA and TAHC from having the tools necessary to effectively control the spread of cattle fever ticks, thereby putting Wyoming cattle at risk due to the import of improperly treated Texas cattle. Dr. Logan stated that in the event that tools are not available to address cattle fever ticks in Texas, the Wyoming Livestock Board could impose restrictions on Texas cattle from being imported into Wyoming.

Kevin Kester, President of the National Cattleman's Beef Association (NCBA), submitted a comment on behalf of the association against the proposal. Mr. Kester commented that EPA's interpretation of the Co-Ral® label should control as they are the regulatory authority. NCBA's position is that the label provides application restrictions related to ventilation; therefore, TDA's proposed rule is unnecessary and inconsistent with EPA's label.

Tom Sidwell, President of the New Mexico Cattle Growers' Association, submitted comments on behalf of the association against the proposal. Mr. Sidwell commented that the proposal is du-

plicative and unnecessary as the product label currently requires applicators to apply Co-Ral® in a ventilated area.

Susan Kibbe, Executive Director of the South Texas Property Rights Association, submitted comments against the proposal on behalf of the association. Ms. Kibbe stated that the proposal is unnecessary and duplicative as the Co-Ral® label, as interpreted by EPA, currently provides restrictions which prevent application in confined or non-ventilated areas.

Hondo Martinez submitted a comment in favor of the proposal on behalf of HM Cattle Co. Mr. Martinez stated that the product is extremely potent upon application and can cause headaches even with proper equipment, and cause health risks to cattle due to inhalation of Co-Ral®.

Luis Ramirez submitted a comment in favor of the proposal on behalf of Turkey Foot Ranch. Mr. Ramirez stated that he suffered a loss of cattle due to the applicator's failure to follow product application instructions provided on the Material Safety Data Sheet.

Nannette Garcia submitted a comment in favor of the proposal stating that the incorrect application of coumaphos in a spray box resulted in the near death of a five-day-old calf. Ms. Garcia supports the proposal to ensure the correct application of the product.

Daniel Davis, on behalf of Cascabel Cattle Co., submitted a comment in support of the proposal, including citations and references to studies and regulations. Mr. Davis claims that the animal deaths have been caused as a result of exposure to Co-Ral® in spray boxes.

Joe Stuckey submitted comments as attorney on behalf of Cascabel Cattle Company in favor of the proposal because failure to apply the product in a ventilated area would result in ingestion and inhalation by animals. Mr. Stuckey also submitted affidavits/declarations of individuals claiming that application of coumaphos in spray boxes resulted in the deaths of their cattle.

Joe Word submitted a comment urging a revision to the label regarding ventilation standards.

Standlee Roberts, owner/partner of Creed Cattle Company, submitted a comment against the proposal as a cattle operator in Texas and Arkansas. Mr. Roberts stated his concerns that the proposed rule would result in the hindrance of his ability to transport livestock between the two states.

Harriet Lamm submitted a comment opposing the proposal, stating that the current label instructions sufficiently ensure safe product application. Ms. Lamm points to the TCFTEP's long and successful history of use of coumaphos. Ms. Lamm also expressed concerns about the financial burden which could affect producers if spray boxes were prohibited from use.

The Department received multiple comments opposing the proposal stating that the current label prescribes use directions and oversight by an additional governmental agency is duplicative and unnecessary.

Several comments were received against the proposal because of the possible regulatory burden which would result from the unnecessary and duplicative proposed requirements which could be costly and harmful to Texas livestock and the economy.

The Department also received comments against the proposal with concerns that the Texas cattle industry would be at risk if USDA-TAHC did not have the tools necessary to treat cattle fever ticks.

The Department received 120 comments from members of the public, the majority of which were farmers and ranchers, in opposition of the proposal. While the Department appreciates the time taken by these individuals to submit comments, it will not name each person separately. The comments submitted were all substantively the same in a standardized format and stated that the proposal is duplicative of the product label which currently requires USDA-APHIS and TAHC to apply Co-Ral® in a well-ventilated area. The comments state that while ventilation is not defined by TDA, the proposed rule language regarding application is less specific than the current product label. The comments were against the proposal as creating additional unnecessary regulations on the industry.

The majority of the non-form comments received did not speak to the subject of the proposed rule and will not be summarized.

Prior to submitting this rule for adoption, over the last several months TDA has had extensive communications with TAHC, USDA and industry. The Department carefully reviewed all comments and the testimony received during the public hearing. In response to comments that there would be a potential fiscal impact associated with the adopted rule, the Department restates that the rule is adopted to ensure compliance with label use requirements; therefore, no additional resources are required.

The new rule is adopted under §76.104 of the Texas Agriculture Code, which provides the Department with the authority to adopt rules and prescribe methods to be used in the application of a restricted-use or state-limited-use pesticide, and §76.115 which authorizes the Department to adopt rules related to the regulation, repair or alteration of equipment used in the application of restricted use or state limited use pesticides.

The code affected by the adoption is the Texas Agriculture Code, Chapter 76.

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 March 21, 2019.

TRD-201900851

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Effective date: April 10, 2019

Proposal publication date: September 21, 2018

For further information, please call: (512) 463-4075



TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 301. DEFINITIONS

16 TAC §301.1

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §301.1, Definitions, without changes to the text as proposed in the February 15, 2019, issue of the *Texas Register* (44 TexReg 652), which will not be republished. The amendments are non-substantive updates to the statutory

citation in light of SB 1969 (85th Legislature, Regular Session, 2017), which codified the Texas Racing Act.

REASONED JUSTIFICATION

The reasoned justification for the amendments is accuracy in the statutory citation.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

No comments were received in response to the proposal of these amendments.

STATUTORY AUTHORITY

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code §2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act.

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

Filed with the Office of the Secretary of State on March 19, 2019.

TRD-201900831

Chuck Trout

Executive Director

Texas Racing Commission

Effective date: April 8, 2019

Proposal publication date: February 15, 2019

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



CHAPTER 303. GENERAL PROVISIONS

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §303.1, Purpose, and §303.95, Races for Accredited Texas-Bred Horses, without changes to the text as proposed in the February 15, 2019, issue of the *Texas Register* (44 TexReg 653), which will not be republished. The amendments are non-substantive updates to these sections to eliminate citations to Vernon's Civil Statutes in light of SB 1969 (85th Legislature, Regular Session, 2017), which codified the Texas Racing Act.

REASONED JUSTIFICATION

The reasoned justification for the amendments is accuracy in the rule language.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

No comments were received in response to the proposal of these amendments.

SUBCHAPTER A. ORGANIZATION OF THE COMMISSION

16 TAC §303.1

STATUTORY AUTHORITY

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code §2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act.

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

Filed with the Office of the Secretary of State on March 19, 2019.

TRD-201900832

Chuck Trout

Executive Director

Texas Racing Commission

Effective date: April 8, 2019

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



SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 2. PROGRAM FOR HORSES

16 TAC §303.95

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code §2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act.

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

Filed with the Office of the Secretary of State on March 19, 2019.

TRD-201900833

Chuck Trout

Executive Director

Texas Racing Commission

Effective date: April 8, 2019

Proposal publication date: February 15, 2019

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



SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

16 TAC §303.44

The Texas Racing Commission ("the Commission") adopts new 16 TAC §303.44, Oversight of Use of Funds Generated by Pari-Mutuel Racing, with changes to the proposed text as published in the February 15, 2019, issue of the *Texas Register* (44 TexReg 654). The changes from the text as proposed add a requirement that the Commission provide notice and an opportunity to respond before withholding funds under this section. The rule implements Section 2028.003, Tex. Occ. Code (codified effective April 1, 2019 from Section 6.092(e), Article 179e, Vernon's Texas Civil Statutes). The statute, which provides authority for the Commission to suspend or withhold funds from an organization that fails to meet certain accounting and/or reporting requirements, requires a rule to do so.

REASONED JUSTIFICATION

The reasoned justification for the amendments is to provide a mechanism to ensure that organizations subject to the section comply with the Commission's existing reporting requirements.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

The Commission received one comment in response to the proposal of this new section. The comments were submitted by Laird Morgan, board member and attorney for the Texas Greyhound Association (TGA), which also submitted a letter in opposition to the new section prior to its proposal. Mr. Laird's comments included an assertion that the TGA is the only organization affected by this proposal, that under the Racing Act the Commission was required to consult with the TGA before adopting this rule, that the rule is unclear about what reports it applies to, and that there is no justification for this rule because there has never been a problem with the Commission receiving the required reports. The Commission respectfully disagrees with these statements, as there are several organizations that would be subject to suspension or withholding of funds for failure to comply with reporting requirements; the requirement to consult with affected organizations applies to establishing the list of required reports, not the consequences for failure to comply; the list of required reports for breed organizations is articulated in 16 TAC §303.83 and §303.84; and in 2018 two breed organizations failed to timely provide all information required by those sections, including one organization that remains out of compliance nine months after the due date. However, the Commission recognizes the potential for the rule as proposed to be employed prematurely, so the rule is being adopted with additional language requiring notice and an opportunity to respond before the Commission withholds funds.

STATUTORY AUTHORITY

The section is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code §2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act, and §6.092(e) (codified as Tex. Occ. Code §2028.003, effective April 1, 2019), which authorizes the commission by rule to suspend or withhold funds under certain circumstances.

§303.44. *Oversight of Use of Funds Generated by Pari-Mutuel Racing.*

(a) Subject to subsection (b), the commission may suspend or withhold funds from an organization:

(1) that it determines has failed to comply with the requirements or performance measures adopted under Section 2028.001, Tex. Occ Code; or

(2) for which material questions on the use of funds by the organization are raised following an independent audit or other report to the commission.

(b) The commission shall not withhold funds from an organization pursuant to subsection (a) unless:

(1) the commission has notified the organization of all outstanding requirements, performance measures, and material questions on the use of funds by the organization and has provided at least 30 days for the organization to address the issue(s); and

(2) the issues remain unresolved after the deadline indicated in the letter.

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 March 19, 2019.

TRD-201900828
Chuck Trout
Executive Director
Texas Racing Commission
Effective date: April 8, 2019
Proposal publication date: February 15, 2019
For further information, please call: (512) 833-6699

◆ ◆ ◆
CHAPTER 313. OFFICIALS AND RULES OF
HORSE RACING
SUBCHAPTER B. ENTRIES, SCRATCHES,
AND ALLOWANCES
DIVISION 1. ENTRIES

16 TAC §313.103

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §313.103, Officials and Rules of Horse Racing, without changes to the proposed text as published in the February 15, 2019, issue of the *Texas Register* (44 TexReg 656), which will not be republished. The amendments allow microchipping in addition to tattooing as allowable means of identifying horses in order to be eligible to start in a race.

REASONED JUSTIFICATION

The reasoned justification for the amendments is to allow an additional option for identifying horses and savings to breeders and owners from not having to tattoo a horse that is already microchipped, in light of the Jockey Club's new requirement that thoroughbred horses be microchipped rather than tattooed in order to be entered in a race.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

No comments were received in response to the proposal of these amendments.

STATUTORY AUTHORITY

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code §2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act.

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

Filed with the Office of the Secretary of State on March 19, 2019.

TRD-201900830
Chuck Trout
Executive Director
Texas Racing Commission
Effective date: April 8, 2019
Proposal publication date: February 15, 2019
For further information, please call: (512) 833-6699

◆ ◆ ◆
CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER C. REGULATION OF LIVE
WAGERING
DIVISION 2. DISTRIBUTION OF
PARI-MUTUEL POOLS

16 TAC §321.321

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §321.321, relating to Fortune Pick (n), without changes to the text as proposed in the February 15, 2019, issue of the *Texas Register* (44 TexReg 657). The amendments will not be republished. This section outlines the requirements for the Fortune Pick (n) wager. The amendments allow a racing association (racetrack) to eliminate the payout of partial winners (fewer than six out of six, etc.) to provide for larger carryover amounts and would permit a track to carry over a pool unexpectedly remaining at the end of a meet to the next meet of the same breed, rather than the next meet of a different breed.

REASONED JUSTIFICATION

The reasoned justification for these amendments is (1) allowing associations additional flexibility in how they structure their wagering pools, and (2) keeping dollars wagered on a particular breed going to payouts on races of the same breed.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

No comments were received in response to the proposal of these amendments.

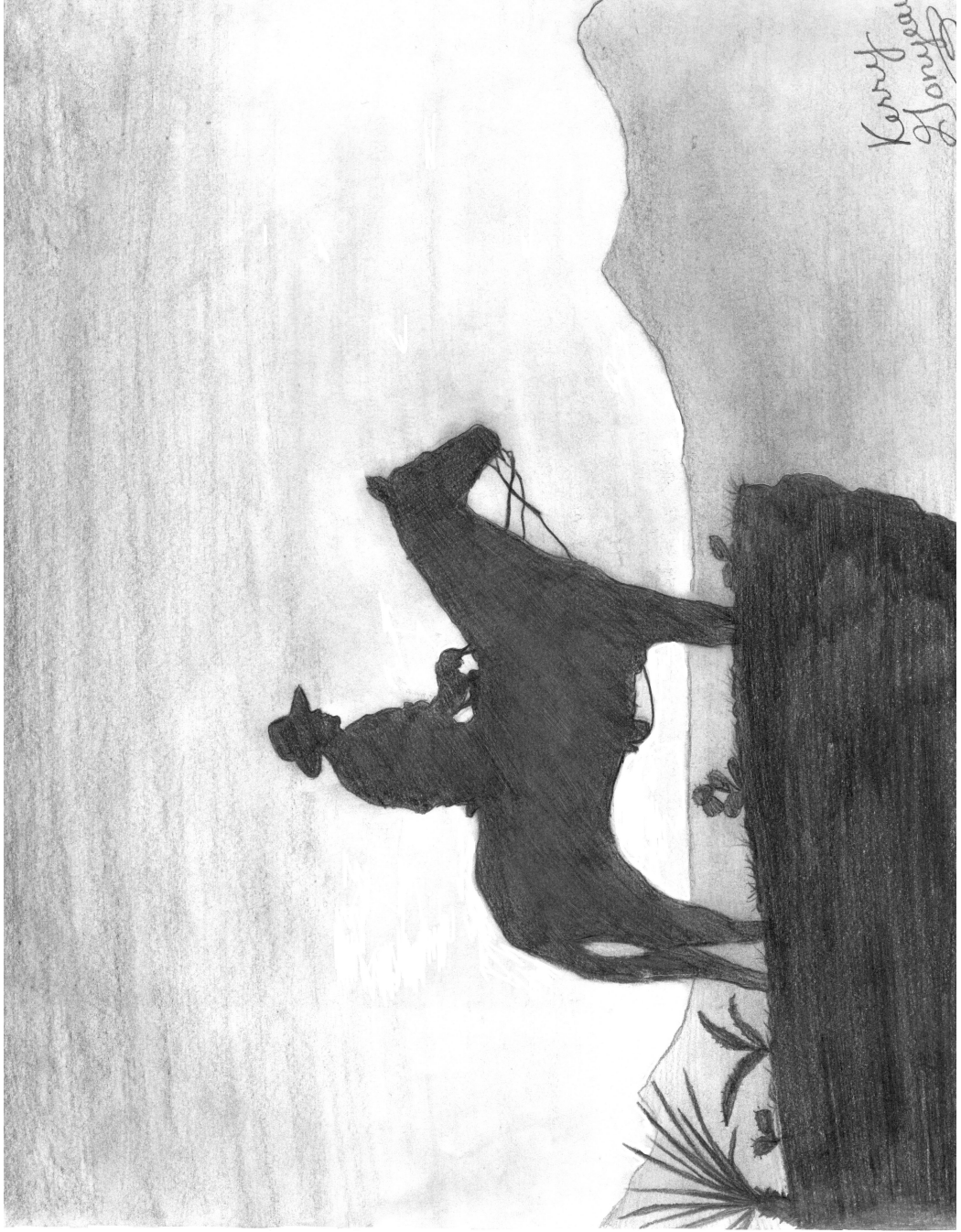
STATUTORY AUTHORITY

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02 (codified as Tex. Occ. Code §2023.004, effective April 1, 2019), which authorizes the Commission to adopt rules to administer the Act, and §11.01 (codified as Tex. Occ. Code §2027.001, effective April 1, 2019), which requires the Commission to adopt rules to regulate pari-mutuel wagering on horse and greyhound races.

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 March 19, 2019.

TRD-201900829
Chuck Trout
Executive Director
Texas Racing Commission
Effective date: April 8, 2019
Proposal publication date: February 15, 2019
For further information, please call: (512) 833-6699



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Commission on the Arts

Title 13, Part 3

The Texas Commission on the Arts (Commission) publishes its notice of intent to review and consider for re-adoption, revision, or repeal Title 13 Texas Administrative Code Chapter 31 (Agency Procedures), Chapter 32 (Memoranda of Understanding), and Chapter 35 (A Guide to Programs and Services) pursuant to Texas Government Code §2001.039.

The Commission will consider whether the reasons for adopting the rules contained in these chapters continue to exist. The commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

Any questions or written comments pertaining to this notice should be directed to the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406, ATTN: Gary Gibbs, or by email to ggibbs@arts.texas.gov. Any proposed amendments as a result of the review will be published in the *Texas Register* in compliance with Texas Government Code, Chapter 2001, and will be open for the required public comment period prior to adoption or repeal by the commission.

TRD-201900941
Gary Gibbs
Executive Director
Texas Commission on the Arts
Filed: March 27, 2019



Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (DWC) will review all sections within the "Old Law" chapters,

Chapters 41 - 69, of Title 28, Part 2 of the Texas Administrative Code, in accordance with §2001.039 of the Texas Government Code.

DWC will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedures Act, Texas Government Code Ch. 2001.

You may submit comments on whether these rules should be repealed, readopted, or readopted with amendments. Specifically, DWC is interested in comments on whether 28 TAC §42.105 (Tex. Dep't of Ins., Div. of Workers' Comp., Medical Fee Guideline) should be updated to reference the current requirements of 28 TAC §134.201 (Tex. Dep't of Ins., Div. of Workers' Comp., Medical Fee Guideline for Medical Treatments and Services Provided under the Texas Workers' Compensation Act). Please submit any comments in writing no later than 5:00 p.m. on April 6, 2019. Comments received after that date will not be considered.

Comments should clearly specify the particular section of the rule to which they apply and include proposed alternative language as appropriate. General comments should be designated as such.

Comments may be submitted by e-mail to RuleComments@tdi.texas.gov or by mailing or delivering your comments to Cynthia Guillen, Office of Workers' Compensation Counsel, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

TRD-201900935
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: March 27, 2019





TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

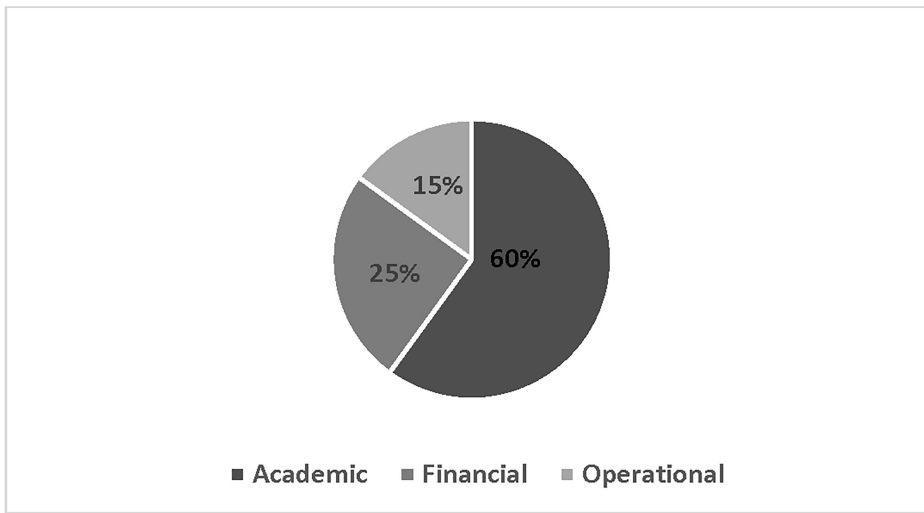
2018 Charter School Performance Framework: Overview

The Charter School Performance Framework (CSPF), required by Texas Education Code (TEC §12.1181), is designed to provide parents, the public, charter operators, and the authorizer with an annual snapshot of each charter school's performance.

The Texas Education Agency (TEA) is committed to expanding the number of high-quality educational options in our portfolio. To help us meet this goal, the 2018 CSPF has been redesigned to increase transparency about TEA's performance expectations for charter schools. In addition, the 2018 CSPF is now better aligned with the Texas A-F accountability framework, the Charter FIRST financial accountability rating system, and best practices that have been identified by the National Association of Charter School Authorizers.

The CSPF includes three frameworks that measure academic, financial, and operational performance. 2018 CSPF reports will include an overall CSPF score and a subscore for each framework. Indicators that will be assessed within each framework are outlined in this document.

Charters are rated at the district (LEA) level. The calculation for the overall CSPF score is as follows¹:



Overall performance

Measures the charter school's overall combined performance on the academic, financial, and operational frameworks.

Meets Expectations

The charter school attained an overall score that was at or above 60%.

Does Not Meet Expectations

The charter school attained an overall score that was less than 60%.

¹ If the charter school does not receive an A-F rating, it will not receive an overall rating. If the charter school does not receive an operational or financial rating, its A-F rating will equal its overall CSPF score.

2018 Academic Framework Indicators

The Academic Framework evaluates each charter school's academic performance. This framework answers the evaluative question: Is the academic program a success for all students? Meeting the expectations in this framework is indicative of an effective academic program where student learning—the central purpose of every school—is taking place.

The following Academic Framework indicators facilitate the evaluation of charter school academic performance.

<u>Number</u>	<u>Indicator</u>	<u>Source and Calculation</u>	<u>Points possible</u>
<u>1a</u>	<u>Overall A-F score</u>	<u>2018 accountability rating: overall scale score</u>	<u>100</u>
<u>1b</u>	<u>Achievement status for subgroups</u>	<ul style="list-style-type: none"> • <u>2018 Closing the Gaps data: academic achievement status</u> • <u>Percent of evaluated indicators met</u> 	<u>100</u>
<u>1c</u>	<u>English language proficiency for English learners</u>	<ul style="list-style-type: none"> • <u>2018 Closing the Gaps data: English language proficiency</u> • <u>Earn 10 points if target was met.</u> • <u>Earn 0 points if target was missed.</u> 	<u>10</u>
<u>1d</u>	<u>Campus status</u>	<ul style="list-style-type: none"> • <u>Earn 10 points if all the charter's campuses met state standards or were not rated.</u> • <u>Earn 0 points if any campus failed.</u> 	<u>10</u>
<u>Academic framework calculation² = .6(1a) + .2(1b) + .1(10*1c) + .1(10*1d)</u>			<u>100</u>

² If data is not available, academic framework scores may be based on the following calculations:

- If the school did not test enough English learners (i.e., small n size) to generate a Closing Gaps English language proficiency score, the overall calculation will be adjusted to .3(1b).
- If there is no Closing Gaps data for the school, the overall calculation will be adjusted to .9(1a).
- If the charter school does not receive an A-F rating, it will not receive an academic framework rating.

Overall score on the academic framework

Measures the charter school's overall performance on indicators included in the academic framework.

Meets Expectations

The charter school attained an overall score on the academic framework that was at or above 60%.

Does Not Meet Expectations

The charter school attained an overall score on the academic framework that was less than 60%.

2018 Academic Framework Indicators: AEA Provisions

In accordance with TEC §12.1181, the Academic Framework includes indicators for charter schools evaluated under alternative education accountability (AEA) provisions of the Texas Accountability Rating System. The *2018 Accountability Manual* describes in more detail how scores are calculated or scaled differently for AEA schools.³

<u>Number</u>	<u>Indicator</u>	<u>Source and Calculation</u>	<u>Points possible</u>
<u>1a</u>	<u>Overall academic performance</u>	<u>2018 accountability rating: overall scale score (AEA scaling)</u>	<u>100</u>
<u>1b</u>	<u>Academic status and growth for subgroups</u>	<u>2018 Closing the Gaps data: Closing the Gaps scaled score (AEA scaling)</u>	<u>100</u>
<u>1c</u>	<u>Campus status</u>	<ul style="list-style-type: none"> • <u>Earn 10 points if all the charter's campuses met state standards or were not rated.</u> • <u>Earn 0 points if any campus failed.</u> 	<u>10</u>
<u>Academic framework calculation⁴ = .6(1a) + .3(1b) + .1(10*1c)</u>			<u>100</u>

Overall score on the academic framework

Measures the AEA charter school's overall performance on indicators included in the academic framework.

Meets Expectations

The AEA charter school attained an overall score on the academic framework that was at or above 60%.

Does Not Meet Expectations

The AEA charter school attained an overall score on the academic framework that was less than 60%.

³ For additional detail read: p. 17 (graduation and dropout rate calculations); p. 45 (student achievement domain scaling tables); p. 46 (scaling tables for graduation rate and the Closing the Gaps domain); chapter 7 (AEA provisions); and Appendix I Scaling Resources. The full *2018 Accountability Manual* is available online at the following link: <https://tea.texas.gov/2018accountabilitymanual.aspx>.

⁴ If data is not available, AEA academic framework scores may be based on the following calculations:

- If there is no Closing Gaps data for the school, the overall calculation will be adjusted to .9(1a).
- If the charter school does not receive an A-F rating, it will not receive an academic framework rating.

2018 Financial Framework Indicators

Financial Framework indicators are evaluated in the Charter School Financial Integrity Rating System of Texas (Charter FIRST). As described in 19 TAC §109.1001, the purpose of Charter FIRST is to ensure that charter schools are held accountable for the quality of their financial management practices.

Note: Financial Framework indicators are not evaluated for charter schools in their first year of operation.

Read more about Charter FIRST on the TEA website.

The Financial Framework indicators below provide key data to assess the financial health and viability of charter schools.⁵

<u>Number</u>	<u>Indicator</u>	<u>Source and Calculation</u>	<u>Points possible</u>
<u>2a</u>	<u>Overall financial performance</u>	<u>Overall score on Charter FIRST (2017-2018)</u>	<u>100</u>
<u>2b</u>	<u>Short-term solvency: cash on hand</u>	<u>Charter FIRST indicator #6 (2017-2018)</u>	<u>10</u>
<u>2c</u>	<u>Short-term solvency: ratio of current assets to current liabilities</u>	<u>Charter FIRST indicator #7 (2017-2018)</u>	<u>10</u>
<u>2d</u>	<u>Long-term solvency: revenues equal or exceed expenses</u>	<u>Charter FIRST indicator #9 (2017-2018)</u>	<u>10</u>
<u>2e</u>	<u>Long-term solvency: debt service coverage ratio</u>	<u>Charter FIRST indicator #10 (2017-2018)</u>	<u>10</u>
$\text{Financial framework calculation} = .6(2a) + .2(10 * \frac{\#2b + \#2c}{2}) + .2(10 * \frac{\#2d + \#2e}{2})$			<u>100</u>

Overall score on the financial framework	
<u>Measures the charter school’s overall performance on indicators included in the financial framework.</u>	
<input type="checkbox"/>	Meets Expectations <u>The charter school attained an overall score on the financial framework that was at or above 60%.</u>
<input type="checkbox"/>	Does Not Meet Expectations <u>The charter school attained an overall score on the financial framework that was less than 60%.</u>

⁵ Charter schools that are operated by institutions of higher education will receive only a pass/fail on the financial framework, reflective of their FIRST score. These schools receive neither an overall numeric FIRST score nor scores on solvency indicators. To calculate the overall CSPF score: pass = 100.

2018 Operational Framework Indicators

The Operational Framework indicators facilitate evaluation of charter schools' compliance with federal law, state law, state rules or regulations, and/or the charter contract.

The ratings assigned to indicators in the Operational Framework neither negate any ratings (including, but not limited to state accountability, Charter FIRST, Accreditation, or PBMAS) that a charter school or charter campus receives, nor removes the requirements associated with any sanctions or interventions required as a result of their ratings.

The following Operational Framework indicators evaluate the charter school's compliance with educational, operational, governance, and reporting requirements.

<u>Number</u>	<u>Indicator</u>	<u>Points</u>
<u>3a</u>	<u>Teacher qualifications</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u>
<u>3b</u>	<u>Program requirements: Special populations</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u> • <u>Far below: -1 point</u>
<u>3c</u>	<u>Program requirements: Bilingual education/English as a second language populations</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u> • <u>Far below: -1 point</u>
<u>3d</u>	<u>Program requirements: Career and technical education populations</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u> • <u>Far below: -1 point</u>
<u>3e</u>	<u>Timely filing of governance reporting forms</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u>
<u>3f</u>	<u>Training requirements for board members and charter school officials</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u>
<u>3g</u>	<u>Criminal record employment requirements</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u>
<u>3h</u>	<u>Timely filing of PEIMS data</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u>
<u>3i</u>	<u>TREx usage requirements</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u>
<u>3j</u>	<u>Certificate of occupancy requirements</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u>
<u>3k</u>	<u>Administrative cost ratio</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u>
<u>3l</u>	<u>Maintenance of 501(c)(3) status⁶</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u>
<u>3m</u>	<u>50% of students in tested grades</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u>
<u>3n</u>	<u>Eligibility to participate in child nutrition program</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u>

⁶ If the charter holder fails to maintain 501(c)(3) status, it is no longer eligible to operate charter schools.

<u>Number</u>	<u>Indicator</u>	<u>Points</u>
<u>3o</u>	<u>Appropriate handling of secure assessment materials</u>	<ul style="list-style-type: none"> • <u>Meets: 1 point</u> • <u>Does not meet: 0 points</u>
<u>Operational framework calculation = $\frac{\#points\ earned}{\#of\ indicators\ evaluated} * 100$</u>		<u>100</u>

Operational Framework Indicators

3a. Teacher Qualifications

Charter school teachers must hold a baccalaureate degree.

TEC §12.129, 19 TAC §100.1015(b)(3)(F)

Meets Expectations

All teachers at the charter school hold a baccalaureate degree or meet the statutory exception.⁷

Does Not Meet Expectations

Fewer than 100.0% of teachers at the charter school hold a baccalaureate degree.

Not Applicable

The charter school failed to report staff data or reported only contracted classroom teachers.

Data source: 2017-18 TAPR District Staff Information, Teachers by Highest Degree Held

3b. Program Requirements – Special Populations

Charter schools must meet program requirements for special populations, including, but not limited to, special education.

TEC §12.104(b)(2)(F), 19 TAC §100.1032(1)(D)

Meets Expectations

The charter school received a *Meets Requirements* determination for special education.

Does Not Meet Expectations

The charter school received a *Needs Assistance* determination for special education.

Far Below Expectations

The charter school received a *Needs Intervention* or *Needs Substantial Intervention* determination for special education.

Data source: 2018 PBMAS, 2018-19 Intervention Stage and Activity Manager (ISAM)

⁷ Per TEC §12.129(b), in some cases, teachers of noncore vocational courses may qualify for an exception if they meet alternative requirements.

3c. Program Requirements – Bilingual Education/English as a Second Language Populations

Charter schools must meet program requirements for BE/ESL populations.
TEC §12.104(b)(2)(G), 19 TAC §100.1032(1)(D)

<input type="checkbox"/> <u>Meets Expectations</u> <u>The charter school is not staged for BE/ESL.</u>
<input type="checkbox"/> <u>Does Not Meet Expectations</u> <u>The charter school is in Stage 1 or Stage 2 for BE/ESL.</u>
<input type="checkbox"/> <u>Far Below Expectations</u> <u>The charter school is in Stage 3 or Stage 4 for BE/ESL.</u>

Data source: 2018 PBMAS and 2018-19 ISAM

3d. Program Requirements – Career and Technical Education Populations

Charter schools must meet program requirements for CTE populations.
19 TAC §100.1032(1)(D)

<input type="checkbox"/> <u>Meets Expectations</u> <u>The charter school is not staged for CTE.</u>
<input type="checkbox"/> <u>Does Not Meet Expectations</u> <u>The charter school is in Stage 1 or Stage 2 for CTE.</u>
<input type="checkbox"/> <u>Far Below Expectations</u> <u>The charter school is in Stage 3 or Stage 4 for CTE.</u>

Data source: 2018 PBMAS and 2018-19 ISAM

3e. Timely Filing of Governance Reporting Forms

Charter schools must file Governance Reporting Forms in a timely manner.
TEC §12.119(b), 19 TAC §100.1007

<input type="checkbox"/> <u>Meets Expectations</u> <u>The charter school filed 2018-2019 governance reporting forms in a timely manner.</u>
<input type="checkbox"/> <u>Does Not Meet Expectations</u> <u>The charter school failed to file 2018-2019 governance reporting forms in a timely manner.</u>

Data source: TEA Charter School Tracking System governance reporting forms

3f. Training Requirements

Charter board members and school officials must complete the annually required training.

TEC §12.123, 19 TAC §§ 100.1102-100.1105

Meets Expectations

All charter board members and school officers appointed or hired prior to December 3, 2018 completed the annually-required training or they have met criteria for exceptions provided for in the TEA Governance Form.

Does Not Meet Expectations

Some charter board members and/or school officers appointed or hired prior to December 3, 2018 failed to complete the annually required training and/or failed to meet criteria for exceptions provided for in the TEA Governance Form.

Data source: TEA Charter School Tracking System governance reporting forms

Note: A “Does Not Meet Expectations” will automatically be assigned for 3f if the charter school’s governance reporting forms are not submitted by the required date.

3g. Criminal Record Employment Requirements

Charter schools must certify compliance with TEC §22.085.

TEC §§ 12.120, 12.1059, 22.0832, 22.085, 19 TAC §100.1151

Meets Expectations

The charter school certified its compliance with TEC §22.085 by submitting the “Criminal History Compliance Certification” for the 2018-19 school year in a timely manner.

Does Not Meet Expectations

The charter school failed to certify its compliance with TEC §22.085 because it did not submit the “Criminal History Compliance Certification” for the 2018-19 school year in a timely manner or if a finding from a Special Accreditation Investigation indicates the charter school is not in compliance.

Data source: TEA Educator Certification

3h. Timely Filing of PEIMS Data

This indicator measures the charter school’s compliance with PEIMS reporting requirements.

TEC §12.104

Meets Expectations

The charter school was in compliance with 2017-18 PEIMS data reporting timelines.

Does Not Meet Expectations

The charter school was not in compliance with 2017-18 PEIMS data reporting timelines.

Data source: TEA Student Education Data System/PEIMS Division

3i. TREx Usage Requirements

Charter schools must participate in the electronic Texas Records Exchange (TREx) system.

TEC §7.010

Meets Expectations

All the charter's campuses consistently use TREx to transfer and receive student records in a timely manner.

Does Not Meet Expectations

Some of the charter's campuses failed to consistently use TREx to transfer and receive student records in a timely manner.

Data source: TEA Student Education Data System/PEIMS Division

3j. Certificate of Occupancy Requirements

All charter school buildings used for educational purposes must have a valid certificate of occupancy for educating children.

19 TAC §§ 100.1215(b) and 100.1001(3)(E)

Meets Expectations

The charter school is in compliance with certificate of occupancy requirements.

Does Not Meet Expectations

The charter school is not in compliance with certificate of occupancy requirements.

Not Applicable

The charter holder is a university that has not provided a certificate of occupancy for the educational use of charter school sites that are on the university campus.

Data source: TEA Charter Schools Tracking System

3k. Administrative Cost Ratio

Measures whether the charter school's administrative costs and size are proportionate.

Meets Expectations

The charter school scored 6 points or higher on Charter FIRST indicator #11.

Does Not Meet Expectations

The charter school scored fewer than 6 points on Charter FIRST indicator #11.

Not Applicable

The charter school is in its first year of operation and is not evaluated on this indicator.

Data Source: 2017-18 Charter FIRST Indicator 11

3l. Maintenance of 501(c)(3) Status

Charter holders are required to maintain their 501(c)(3) status at all times.

TEC §12.101, 19 TAC §100.1217

Meets Expectations

The charter holder maintained its 501(c)(3) status.

Does Not Meet Expectations

The charter holder failed to maintain its 501(c)(3) status.

Not Applicable

The charter holder is a governmental entity, college, or university.

Data Sources: Texas Secretary of State and Internal Revenue Service (IRS)

Note: Per TEC §12.101, failure to maintain 501(c)(3) status means that the charter holder is no longer eligible to operate an open-enrollment charter school.

3m. 50% of students in tested grades

Confirms that the constitution of each campus within the charter school's student body is sufficient for state accountability standards.

19 TAC §100.1032(3)(c)(2) and 1033(b)(10-13)

Meets Expectations

Each campus operated by the charter school has at least 50% of its student population in tested grades or the charter holder has obtained a waiver from the commissioner of education.⁸

Does Not Meet Expectations

One or more of the campuses operated by the charter school has fewer than 50% of its student population in tested grades and the charter holder has not obtained a waiver from the commissioner of education.

Data source: 2018-2019 TAPR

3n. Eligibility to Participate in Child Nutrition Program

Indicates whether the charter school has maintained its eligibility to participate in child nutrition programs

19 TAC §100.1022(c)(1)(A)(xi) and 100.1032(2)(N)

Meets Expectations

The charter school maintained its eligibility to participate in child nutrition programs.

Does Not Meet Expectations

The charter school failed to maintain its eligibility to participate in child nutrition programs and did not regain its eligibility within 30 days.

⁸ This includes schools in their first two years of operation.

Data source: Texas Department of Agriculture

3o. Appropriate Handling of Secure Assessment Materials

Measures the charter school's compliance with state rules concerning assessment materials.

TEC §39.0301-39.0304, 19 TAC §101.3031

Meets Expectations

The charter school fully complied with state rules concerning delivery of assessment materials, storage and administration of assessments, and return of assessment materials for the most recent assessment period.

Does Not Meet Expectations

The charter school failed to fully comply with state rules concerning delivery of assessment materials, storage and administration of assessments, and return of assessment materials for the most recent assessment period.

Data source: TEA Student Assessment

Overall score on the operational framework

Measures the charter school's overall compliance with indicators on the operational framework.

Meets Expectations

The charter school attained an overall score on the operational framework that was at or above 60%.

Does Not Meet Expectations

The charter school attained an overall score on the operational framework that was less than 60%.

2018 Adult High School Diploma and Industry Certification Public Charter School Performance Framework Indicators

The Adult High School Diploma Charter School Framework contains standards by which to measure the performance of an adult high school program operated under a charter granted under Texas Education Code (TEC) §29.259.

The following indicators facilitate review of the adult high school diploma charter school's performance.

1. Student achievement on exit-level assessment
2. Completion of high school diploma program
3. Completion of industry certification program
4. Enrollment in institutions of higher education
5. Significant income increase

Data will be reported for all five indicators; however, the school's performance will only be scored for the first three. For each of those three indicators, the charter school may either meet or not meet the expectations described below.

1. Student achievement on academic assessments

Measures graduating students' performance on applicable end-of-course (EOC) assessments.

Meets Expectations

The percentage of all students performing at the "Meets Grade Level" standard on EOC assessments was greater than or equal to 20.

Does Not Meet Expectations

The percentage of all students performing at the "Meets Grade Level" standard on EOC assessments was less than 20.

Data source: 2017-18 TAPR District Performance – STAAR Percent at Met Standard or Above (All Grades), All Subjects

2. Completion of high school diploma program

Measures number of program participants who successfully completed high school diploma program.

Meets Expectations

The number of graduates was equal to or greater than the number of students classified as 12th graders.

Does Not Meet Expectations

The number of graduates was less than the number of students classified as 12th graders.

Data source: 2017-2018 TAPR

Note: The number of graduates is used for this indicator, rather than percentage over time, because sufficient longitudinal data is not yet available.

3. Completion of industry-based certification program

Measures percentage of program participants who successfully completed an approved industry-based certification.⁹

Meets Expectations

At least 25% of program participants successfully completed an approved industry-based certification.

Does Not Meet Expectations

Fewer than 25% of program participants successfully completed an approved industry-based certification.

Data source: 2017-2018 TAPR

⁹ A list of approved industry-based certifications is available at: <https://tea.texas.gov/cte/>.



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Daniel L. Mauldin, individually, and d/b/a Travis Equipment Company*; Cause No. D-1-GN-15-001739; in the 98th Judicial District Court, Travis County, Texas.

Background: The State initiated the suit on behalf of the Texas Commission on Environmental Quality ("TCEQ"), alleging that from 2010 to 2012, Defendant Daniel L. Mauldin (1) operated a composting and mulching recycling facility in Midlothian, Ellis County, Texas without permission, making it an unauthorized municipal solid waste site, and (2) stored combustible wood mulch near power lines, in violation of the Texas Solid Waste Disposal Act, TCEQ rules, and a TCEQ administrative order. The Defendant's facility is now operating in compliance with the TCEQ order and applicable TCEQ rules.

Proposed Settlement: The parties propose an Agreed Final Judgment which provides for an award of civil penalties and attorney's fees to the State in the amount of \$16,500 and \$5,500 respectively.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas 78701, and copies may be obtained in person or by mail for the cost of copying. Requests for copies of the proposed judgment and settlement, and written comments on the same, 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, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201900918
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: March 26, 2019

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/01/19 - 04/07/19 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/01/19 - 04/07/19 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201900913
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 26, 2019

Texas Education Agency

Notice of Correction Concerning Public Notice Seeking Preliminary Public Comment on Texas Education Agency's Proposed Career and Technical Education Programs of Study
Filing Date. March 27, 2019

The TEA published Public Notice Seeking Preliminary Public Comment on Texas Education Agency's (TEA's) Proposed Career and Technical Education (CTE) Programs of Study in the March 22, 2019 issue of the *Texas Register* (44 TexReg 1539).

The TEA is postponing preliminary public comment on the Proposed Statewide CTE Programs of Study developed pursuant to the Strengthening Career and Technical Education for the 21st Century Act signed by the president on July 31, 2018. The TEA will be inviting preliminary public comment on the Proposed Statewide CTE Programs of Study developed pursuant to the Strengthening Career and Technical Education for the 21st Century Act at a future date.

For more information, contact the TEA Division of College, Career, and Military Preparation by mail at 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9661; or by email at ccmp@tea.texas.gov.

Issued in Austin, Texas, on March 27, 2019.

TRD-201900931
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 27, 2019

Request for Proposals Concerning Math Innovation Zones (MIZ) Pay for Success Intermediary Services

Filing Date. March 27, 2019

Filing Authority. The availability of funds under RFP #701-19-029 is authorized by Texas Education Code, §28.020, Math Innovation Zones.

Eligible Applicants. Texas Education Agency (TEA) is requesting proposals under RFP #701-19-029 from nonprofit organizations, institutions of higher education, private or public companies, and individuals, as appropriate, to provide Pay for Success (PFS) Intermediary Services for MIZ.

Description. The TEA is soliciting proposals from qualified institutions of higher education, nonprofit organizations, private or public companies, and individuals with significant experience in: (1) PFS Advisory Services related to the design and implementation of an outcomes-based financing model appropriate for a Kindergarten-Grade 12 education setting with multiple end payors; (2) Capital Raise Activities to build the underlying financing mechanism to scale MIZ; and (3) Ongoing Project Management Services necessary to sustain and grow PFS as a viable funding option for school districts and charter schools. TEA's MIZ initiative supports school districts and open-enrollment charter schools in the expansion and scale of high-quality blended learning programs in mathematics with a focus on a high-fidelity implementation of the program. Blended learning is a classroom model that combines face-to-face teacher instruction with online learning. TEA has defined a high-fidelity implementation of blended learning, developed a technical assistance network to support school districts, and awarded pilot grants to districts committed to and capable of implementing the program. MIZ is now in the first year of implementation across 14 school districts and charter school networks representing 48 schools, over 350 classrooms, and 9,100 students. The primary goal of the current year of implementation is to evaluate and refine programmatic considerations associated with a high-fidelity implementation of MIZ. Through an outcomes-based funding model, MIZ seeks to reduce the financial and operational risks to school districts and charter schools associated with the adoption of a blended learning program. TEA believes that the removal of these barriers will allow for faster and more effective scale of MIZ.

Dates of Project. The initial term of any contract resulting from this solicitation shall be from contract execution to August 31, 2020. TEA, in its sole discretion, may renew any contract awarded pursuant to this solicitation for two additional fiscal years under the same scope of work. All contracts are subject to appropriation of funds by the Texas Legislature. TEA will notify the contractor of its decision to renew the contract, in which notice may be pursuant to purchase order issuance or other means. If the contract is renewed, the first optional renewal period shall be from September 1, 2020, through August 31, 2021. The second optional renewal period shall be from September 1, 2021, through August 31, 2022.

Project Amount. The contract value for the initial term is up to \$275,000 with a maximum value for each optional renewal term of \$275,000. The total contract value is up to \$825,000.

Selection Criteria. Proposals will be selected based on reviewers' assessment of each proposer's ability to carry out all requirements contained in the RFP. A proposer who is in default or otherwise not in good standing under any other current or prior contract with TEA at the time of selection will not be eligible for an award. TEA will base its selection on best value considerations, including the purchase price, the compatibility to facilitate the exchange of existing data, and the capacity for expanding the project in subsequent years.

The TEA is not obligated to approve any proposal, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs before a proposal is approved. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Obtaining Access to the RFP. The RFP may be viewed on the Electronic State Business Daily website at <http://www.txsmartbuy.com/sp/701-19-029>

Further Information. All inquiries about this RFP must be sent in writing to the TEA Contracts and Purchasing Division at TEASolicitations@tea.texas.gov.

Deadline for Receipt of Proposals. Proposals must be received by the TEA Division of Purchasing and Contracts by 2:00 p.m. (Central Time), Thursday, April 25, 2019, to be considered for funding. Proposals are submitted by mail to the TEA Contracts and Purchasing Division at 1701 North Congress Avenue, Austin, Texas 78701.

TRD-201900932

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: March 27, 2019

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 6, 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 **May 6, 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: Alumax Mill Products, Incorporated; DOCKET NUMBER: 2018-1664-AIR-E; IDENTIFIER: RN100215250; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: aluminum coil production plant; RULES VIOLATED: 30 TAC §§101.20(2) and (3), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §63.1506(m)(3), New Source Review Permit Numbers 9476 and PSDTX886M1, Special Conditions Number 4.B, Federal Operating Permit Number O1413, General Terms and Conditions and

Special Terms and Conditions Number 1.A, and Texas Health and Safety Code, §382.085(b), by failing to comply with the established baghouse inlet temperature limit for Well Furnace Hood Baghouse Number 2 Stack, Emissions Point Number 011A; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Apache Corporation; DOCKET NUMBER: 2018-1721-AIR-E; IDENTIFIER: RN107597551; LOCATION: Wheeler, Wheeler County; TYPE OF FACILITY: oil and natural gas processing plant; RULES VIOLATED: 30 TAC §106.6(b), Permit by Rule Registration Number 122237, and Texas Health and Safety Code, §382.085(b), by failing to comply with all representations with regard to construction plans, operating procedures, and maximum emissions rates in any certified registration; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: BASF TOTAL Petrochemicals LLC; DOCKET NUMBER: 2018-1231-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 36644, PSDTX903M5, and N007M1, Special Conditions Number 1, Federal Operating Permit Number O2551, General Terms and Conditions and Special Terms and Conditions Number 23, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$6,563; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,625; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Caddo Mills Independent School District; DOCKET NUMBER: 2018-1753-PST-E; IDENTIFIER: RN102274461; LOCATION: Caddo Mills, Hunt County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 30 days between each monitoring); PENALTY: \$3,563; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: CENTER POINT SUPPLY, INCORPORATED; DOCKET NUMBER: 2018-1051-PWS-E; IDENTIFIER: RN101179091; LOCATION: Pipe Creek, Bandera County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(d)(2)(A)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons; 30 TAC §290.46(e)(4)(A), by failing to use a water works operator who holds a Class D or higher license; 30 TAC §290.46(f)(2) and (3)(A)(ii)(III), (B)(iv), and (D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2015 - December 31, 2015, and January 1, 2016 - December 31, 2016, monitoring periods; PENALTY: \$575; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2018-1208-AIR-E; IDENTIFIER: RN102018322; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 4437A, PSDTX808, and N014M2, Special Conditions Number 1, Federal Operating Permit Number O1315, General Terms and Conditions and Special Terms and Conditions Number 18, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$242,550; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$97,020; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: City of Arp; DOCKET NUMBER: 2018-1585-PWS-E; IDENTIFIER: RN101209732; LOCATION: Arp, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: \$232; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: City of Burnet; DOCKET NUMBER: 2018-1650-WQ-E; IDENTIFIER: RN100824895; LOCATION: Burnet, Burnet County; TYPE OF FACILITY: public water supply; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of other waste into or adjacent to any water in the state; PENALTY: \$7,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$7,500; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(9) COMPANY: City of Los Fresnos; DOCKET NUMBER: 2018-1712-PWS-E; IDENTIFIER: RN101392009; LOCATION: Los Fresnos, Cameron County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(e)(4)(B), by failing to house the gas chlorination equipment and cylinders of chlorine in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities; 30 TAC §290.42(f)(1)(E)(ii)(I), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.42(f)(2)(H), by failing to separate chlorine feed units, ammonia feed units, and storage facilities by solid, sealed walls; 30 TAC §290.42(m), by failing to enclose each water treatment plant and all appurtenances by an intruder-resistant fence; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(z), by failing to create a nitrification action plan for all systems distributing chloraminated water; 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: \$1,775; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: City of Queen City; DOCKET NUMBER: 2019-0168-MWD-E; IDENTIFIER: RN101918910; LOCATION: Queen City, Cass County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011225001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and §319.5(b) and TPDES Permit Number WQ0011225001, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze samples for required parameters at the minimum frequency specified in the permit; PENALTY: \$8,750; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: City of Weslaco; DOCKET NUMBER: 2018-1522-MWD-E; IDENTIFIER: RN101607943; LOCATION: Weslaco, Hidalgo County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010619003, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitation; PENALTY: \$14,287; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$11,430; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(12) COMPANY: DCP Operating Company, LP; DOCKET NUMBER: 2019-0152-AIR-E; IDENTIFIER: RN100212935; LOCATION: Perryton, Ochiltree County; TYPE OF FACILITY: un-manned natural gas compressor station; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit Number O3374, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Soraya Bun, (512) 239-2695; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(13) COMPANY: ETC Field Services LLC; DOCKET NUMBER: 2019-0060-AIR-E; IDENTIFIER: RN106173644; LOCATION: Orla, Reeves County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O3444/General Operating Permit (GOP) Number 514, Site-wide Requirements Number (b)(9)(G)(i), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O3444/GOP Number 514, Site-wide Requirements Number (b)(3), and THSC, §382.085(b), by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: \$9,375; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(14) COMPANY: ETC Texas Pipeline, Ltd.; DOCKET NUMBER: 2018-1567-AIR-E; IDENTIFIER: RN100226695; LOCATION: Coyanosa, Pecos County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §116.615(2), Standard Permit Registration Number 124037, and Texas Health and Safety Code, §382.085(b), by failing to comply with the standard permit representations; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(15) COMPANY: FMC Technologies, Incorporated; DOCKET NUMBER: 2018-1569-IWD-E; IDENTIFIER: RN107163339; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0005157000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 001 and 002, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1), (11)(A), and (17), 319.1, 319.4, and 319.5(b), and TPDES Permit Number WQ0005157000, Monitoring and Reporting Requirements Numbers 1 and 3, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: \$7,155; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2017-0576-AIR-E; IDENTIFIER: RN102537289; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(1), 115.782(c)(2)(A), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.482-9(a), Federal Operating Permit (FOP) Number O2570, Special Terms and Conditions (STC) Numbers 1.A and 11, New Source Review (NSR) Permit Number 28351, Special Conditions (SC) Number 8.H, and Texas Health and Safety Code (THSC), §382.085(b), by failing to repair or replace leaking valves at the next scheduled process unit shutdown; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O2570, STC Number 11, NSR Permit Number 28351, SC Number 1, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$30,563; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Jamil Alam; DOCKET NUMBER: 2018-1601-EAQ-E; IDENTIFIER: RN110459492; LOCATION: Rollingwood, Travis County; TYPE OF FACILITY: residential site; 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: \$1,875; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(18) COMPANY: Joey Scheffler; DOCKET NUMBER: 2018-1423-OSI-E; IDENTIFIER: RN110497252; LOCATION: Liberty, Liberty County; TYPE OF FACILITY: plumbing business; RULES VIOLATED: 30 TAC §§30.5(a), 285.50(b), and 285.61(1), and Texas Health and Safety Code, §366.071(a), by failing to obtain a license to construct, install, alter, extend, service, maintain, or repair an on-site sewage facility; PENALTY: \$250; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: KLEMME ENTERPRISES, INCORPORATED dba Lomaland Food Mart; DOCKET NUMBER: 2019-0092-PST-E; IDENTIFIER: RN102444361; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by

failing to inspect all sumps, including dispenser sumps, manways, overflow containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$7,044; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(20) COMPANY: Lake Pointe Operating Company, L.L.C.; DOCKET NUMBER: 2018-1598-PST-E; IDENTIFIER: RN102242054; LOCATION: Rowlett, Rockwall County; TYPE OF FACILITY: emergency generator; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: LGD Properties Incorporated; DOCKET NUMBER: 2019-0374-WQ-E; IDENTIFIER: RN110492931; LOCATION: Nevada, Collin County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Lincoln Water Supply Corporation; DOCKET NUMBER: 2018-1701-PWS-E; IDENTIFIER: RN101200590; LOCATION: Giddings, Lee County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(3)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM) based on the locational running annual average, and failing to provide public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the MCL for TTHM for the second and third quarters of 2018; PENALTY: \$360; ENFORCEMENT COORDINATOR: Drew Gartman, (512) 239-1437; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(23) COMPANY: Marathon Petroleum Company LP and Blanchard Refining Company LLC; DOCKET NUMBER: 2018-0863-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 47256 and PSDTX402M3, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1541, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 27, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.715(a) and §122.143(4), FOP Number O1380, GTC and STC Number 21, Flexible Permit Number 22433, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$26,252; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$10,501; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: Felton J. Molden, Jr.; DOCKET NUMBER: 2019-0247-WOC-E; IDENTIFIER: RN106010069; LOCATION: Spring, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT

COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: Nadija Sulyukmanov dba Balaban Apartments 1; DOCKET NUMBER: 2018-1761-PWS-E; IDENTIFIER: RN101195469; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(E)(i), by failing to provide a well capacity of one gallon per minute per connection; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; and 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: N-Tex Sand & Gravel Operating, LLC; DOCKET NUMBER: 2018-1660-AIR-E; IDENTIFIER: RN109196030; LOCATION: Savoy, Fannin County; TYPE OF FACILITY: sand and gravel production and supply plant; 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: \$1,312; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Pelican Island Storage Terminal, LLC; DOCKET NUMBER: 2018-1335-AIR-E; IDENTIFIER: RN100224120; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: bulk chemical storage facility; RULES VIOLATED: 30 TAC §111.111(a)(1)(B) and §122.143(4), Federal Operating Permit (FOP) Number O851, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 3(A)(i) and 7, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records for the annual visible emissions observations; and 30 TAC §117.2045(c) and §122.143(4), FOP Number O851, GTC and STC Number 5(A)(iv), and THSC, §382.085(b), by failing to maintain records of operation for testing and maintenance for all stationary engines; PENALTY: \$8,775; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(28) COMPANY: QUANTCORP CONSTRUCTION, L.L.C.; DOCKET NUMBER: 2018-1737-WQ-E; IDENTIFIER: RN110257508; LOCATION: Laredo, Webb County; TYPE OF FACILITY: commercial construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(29) COMPANY: Raul A. Moran dba Morans Used Auto Parts and Claudia Moran dba Morans Used Auto Parts; DOCKET NUMBER: 2018-1745-AIR-E; IDENTIFIER: RN110308616; LOCATION: Baycliff, Galveston County; TYPE OF FACILITY: auto body refinishing shop; 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: \$1,312; ENFORCEMENT COORDINATOR: Soraya Bun, (512) 239-2695; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: Shade Structures, Incorporated; DOCKET NUMBER: 2018-1383-WQ-E; IDENTIFIER: RN110464369; LOCATION: Plano, Dallas County; TYPE OF FACILITY: construction site; RULE VIOLATED: TWC, §26.121(a)(1) and (c), by failing to prevent an unauthorized discharge of raw wastewater into or adjacent to any water in the state; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(31) COMPANY: Steven R. Smith; DOCKET NUMBER: 2019-0345-WOC-E; IDENTIFIER: RN110636388; LOCATION: Mart, McLennan County; TYPE OF FACILITY: wastewater; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(32) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2018-1293-AIR-E; IDENTIFIER: RN100222900; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 56431, Special Conditions Numbers 1 and 6, Federal Operating Permit Number O612, General Terms and Conditions and Special Terms and Conditions Number 20, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates, and failing to comply with the flare gas recovery system downtime limit; PENALTY: \$167,700; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$67,080; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3424; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(33) COMPANY: TEX-SAN SITE SERVICES, LLC; DOCKET NUMBER: 2018-1425-MLM-E; IDENTIFIER: RN110372570; LOCATION: Adkins, Wilson County; TYPE OF FACILITY: portable restroom rental and waste management service; RULES VIOLATED: 30 TAC §327.5(a) and TWC, §26.266(a), by failing to immediately abate and contain a discharge or spill; and 30 TAC §334.127(a)(1) and (c) and TWC, §26.346(a), by failing to register with the TCEQ an aboveground storage tank in existence on or after September 1, 1989; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Berenice Munoz, (512) 239-2617; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(34) COMPANY: TriStar Convenience Stores, Incorporated dba Handi Stop 17; DOCKET NUMBER: 2018-1604-PST-E; IDENTIFIER: RN102446762; LOCATION: Spring, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(35) COMPANY: United States Gypsum Company; DOCKET NUMBER: 2018-1458-AIR-E; IDENTIFIER: RN100212281; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: wallboard manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(2), 113.1090, and 122.143(4), 40 Code of Federal Regulations §63.6655(d) and (e), Federal Operating Permit (FOP) Number O3129, General Terms and Conditions (GTC) and Special Terms and Conditions Numbers 1.A and 1.E, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records; and 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O3129, GTC, and THSC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance and failing to submit the deviation report no

later than 30 days after the end of each reporting period; PENALTY: \$15,842; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$6,337; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201900904
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 26, 2019

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Enforcement Orders

An agreed order was adopted regarding City of Mason, Docket No. 2017-0217-MSW-E on March 26, 2019, assessing \$6,812 in administrative penalties with \$1,362 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Gerhardt, 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 Hari Enterprises, L.L.C. dba El Campo Truck Stop, Docket No. 2017-0950-PST-E on March 26, 2019, assessing \$3,688 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Mercurief 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 SAMMYS SUPERMARKET INC dba STOP N DRIVE, Docket No. 2017-1441-PST-E on March 26, 2019, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, 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 RBT & NMJ INC dba Ambler Express, Docket No. 2017-1738-PST-E on March 26, 2019, assessing \$2,562 in administrative penalties with \$512 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Huzaifa, LLC dba Stop & Shop Mart, Docket No. 2018-0069-PST-E on March 26, 2019, assessing \$4,800 in administrative penalties with \$960 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 NORTHWEST PETROLEUM LP dba Sam Bass Shell, Docket No. 2018-0081-PST-E on March 26, 2019, assessing \$3,240 in administrative penalties with \$648 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Hewitt, Docket No. 2018-0233-WQ-E on March 26, 2019, assessing \$3,375 in administrative penalties with \$675 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 Runaway Bay, Docket No. 2018-0265-MWD-E on March 26, 2019, assessing \$5,750 in administrative penalties with \$1,150 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 Crane Co., Docket No. 2018-0272-MWD-E on March 26, 2019, assessing \$3,563 in administrative penalties with \$712 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wilma Turner, Docket No. 2018-0283-MSW-E on March 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 Richard and Helen Buckner dba Oak Ridge Village Mobile Home Park, Docket No. 2018-0295-MWD-E on March 26, 2019, assessing \$2,625 in administrative penalties with \$525 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, 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 Gamtex Industries LP dba Gachman Metals & Recycling, Docket No. 2018-0322-AIR-E on March 26, 2019, assessing \$2,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, 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 THI of Texas at Lubbock I, LLC dba Southwest Regional Medical Complex, Docket No. 2018-0340-PST-E on March 26, 2019, assessing \$4,773 in administrative penalties with \$954 deferred. Information concerning any aspect of this order may be obtained by contacting Rahim Momin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ROSHNEIL BUSINESS INVESTMENTS INC dba One Stop, Docket No. 2018-0385-PST-E on March 26, 2019, assessing \$3,113 in administrative penalties with \$622 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 Skywater Water Supply Corporation, Docket No. 2018-0425-PWS-E on March 26, 2019, assessing \$128 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 Ag Producers Co-op, Docket No. 2018-0468-PST-E on March 26, 2019, assessing \$6,750 in administrative penalties with \$1,350 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 RSS-97 Inc dba Haleys One Stop, Docket No. 2018-0471-PST-E on March 26, 2019, assessing \$3,225 in administrative penalties with \$645 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shannon Lynn Goins, Docket No. 2018-0473-MWD-E on March 26, 2019, assessing \$4,312 in administrative penalties with \$862 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 Ty Kuttama dba Holiday Service, Docket No. 2018-0519-PST-E on March 26, 2019, assessing \$7,098 in administrative penalties with \$1,419 deferred. Information concerning any aspect of this order may be obtained by contacting John Paul Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BITTU & SANJEEVAN INC dba Super Fast Food, Docket No. 2018-0528-PST-E on March 26, 2019, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, 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 STEPHENSON DIRT CONTRACTING, L.L.C., Docket No. 2018-0545-WQ-E on March 26, 2019, assessing \$6,875 in administrative penalties with \$1,375 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Petroleum Group, LLC dba TPG 289, Docket No. 2018-0632-PST-E on March 26, 2019, assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Javier Luis Torres dba Javier's Quick Stop, Docket No. 2018-0635-PST-E on March 26, 2019, assessing \$2,937 in administrative penalties with \$587 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 New Oasis Kingdom Assembly Church, Docket No. 2018-0648-PWS-E on March 26, 2019, assessing \$1,028 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 Gulshan Investments Inc dba Fast Trip, Docket No. 2018-0652-PST-E on March 26, 2019, assessing \$3,874 in administrative penalties with \$774 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 Fresno Investments, Inc. dba 3 WAY CORNER STORE, Docket No. 2018-0679-PST-E on March 26, 2019, assessing \$4,000 in administrative penalties with \$800 deferred. Information concerning any aspect of this order 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.

An agreed order was adopted regarding Victoria County Navigation District, Docket No. 2018-0683-PWS-E on March 26, 2019, assessing \$215 in administrative penalties with \$175 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 COVANCE RESEARCH PRODUCTS INC., Docket No. 2018-0715-PWS-E on March 26, 2019, assessing \$2,703 in administrative penalties with \$540 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 ELMO WATER SUPPLY CORPORATION, Docket No. 2018-0732-PWS-E on March 26, 2019, assessing \$795 in administrative penalties with \$159 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 Lake Livingston Water Supply Corporation, Docket No. 2018-0768-PWS-E on March 26, 2019, assessing \$1,464 in administrative penalties with \$292 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 APOSTOLIC ASSEMBLY OF THE FAITH IN CHRIST JESUS, Docket No. 2018-0801-PWS-E on March 26, 2019, assessing \$280 in administrative penalties with \$56 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 Blue Ridge Stores, LLC, Docket No. 2018-0901-PST-E on March 26, 2019, assessing \$3,375 in administrative penalties with \$675 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 Arkema Inc., Docket No. 2018-0918-AIR-E on March 26, 2019, assessing \$6,037 in administrative penalties with \$1,207 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JIM WEST ENTERPRISES, INC. dba Fast Break of Pettus, Docket No. 2018-0929-PST-E on March 26, 2019, assessing \$2,813 in administrative penalties with \$562 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 OCCIDENTAL PERMIAN LTD., Docket No. 2018-0935-PWS-E on March 26, 2019, assessing \$523 in administrative penalties with \$104 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sam Kane Beef Processors, LLC, Docket No. 2018-0946-PST-E on March 26, 2019, assessing \$3,825 in administrative penalties with \$765 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 BELMONT ESTATES PROPERTIES, LLC, Docket No. 2018-0984-PWS-E on March 26, 2019, assessing \$650 in administrative penalties with \$130 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 GREENWOOD WATER CORPORATION, Docket No. 2018-0985-PWS-E on March 26, 2019, assessing \$163 in administrative penalties with \$32 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 Pioneer Natural Resources USA, Inc., Docket No. 2018-1008-AIR-E on March 26, 2019, assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting Trina Grieco, 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 Glenn Fuqua, Inc., Docket No. 2018-1109-WR-E on March 26, 2019, assessing \$1,003 in administrative penalties with \$200 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.

A field citation was adopted regarding GEORGE CLAYTON BUCKLEY, JR., Docket No. 2018-1646-OSI-E on March 26, 2019, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Walter J. Carroll Water Company, Inc., Docket No. 2018-1729-PWS-E on March 26, 2019, assessing \$142 in administrative penalties with \$28 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201900928



Enforcement Orders

An agreed order was adopted regarding DCP Midstream, LP, Docket No. 2015-0477-AIR-E on March 27, 2019, assessing \$29,692 in administrative penalties with \$5,938 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.

A default order was adopted regarding David Lamar Gray, Docket No. 2015-1735-LII-E on March 27, 2019, assessing \$262 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, 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 City of Clarksville, Docket No. 2016-1202-MLM-E on March 27, 2019, assessing \$11,550 in administrative penalties with \$2,310 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Gerhardt, 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 SHARDA CONVENIENCE STORE, INC. dba Sunrise Market 1, Docket No. 2016-1438-PST-E on March 27, 2019, assessing \$43,490 in administrative penalties with \$8,698 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 default order was adopted regarding BHATTI'S GROCERY, LLC dba S&A GROCERY, Docket No. 2017-0702-PST-E on March 27, 2019, assessing \$3,855 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WESTOAKS PLAZA LLC dba On Point, Docket No. 2017-0781-PST-E on March 27, 2019, assessing \$8,074 in administrative penalties with \$6,874 deferred. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding A.J. Brauer Stone, Inc., Docket No. 2017-1176-EAQ-E on March 27, 2019, assessing \$33,750 in administrative penalties with \$6,750 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 BFE DEVELOPMENT CORP., Docket No. 2017-1292-PWS-E on March 27, 2019, assessing \$1,034 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Donald S. Fletcher dba Cattail Creek Mobile Home Park, Docket No. 2017-1418-MWD-E on March

27, 2019, assessing \$73,125 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.

A default order was adopted regarding Events Downrange LLC, Docket No. 2017-1583-MLM-E on March 27, 2019, assessing \$8,293 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, 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 Frontier Tank Lines, Inc., Docket No. 2017-1670-PST-E on March 27, 2019, assessing \$16,354 in administrative penalties with \$3,270 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 CIRCLE Y SADDLES, INC., Docket No. 2018-0060-MLM-E on March 27, 2019, assessing \$8,001 in administrative penalties with \$1,600 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 PHILLIPS 66 COMPANY, Docket No. 2018-0299-AIR-E on March 27, 2019, assessing \$26,252 in administrative penalties with \$5,250 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 E. I. du Pont de Nemours and Company, Docket No. 2018-0317-AIR-E on March 27, 2019, assessing \$13,125 in administrative penalties with \$2,625 deferred. Information concerning any aspect of this order may be obtained by contacting Trina Grieco, 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 Kaufman County Fresh Water Supply District No. 1A, Docket No. 2018-0349-MWD-E on March 27, 2019, assessing \$29,000 in administrative penalties. 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.

A default order was adopted regarding Roy L. Guillory, Docket No. 2018-0374-MSW-E on March 27, 2019, assessing \$1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, 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 Glenn Lacey and Donna Lacey, Docket No. 2018-0383-PST-E on March 27, 2019, assessing \$5,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Isaac Ta, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GB Biosciences LLC, Docket No. 2018-0439-AIR-E on March 27, 2019, assessing \$5,040 in administrative penalties. 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 CENTERVILLE WATER SUPPLY CORPORATION, Docket No. 2018-0459-PWS-E on March 27, 2019, assessing \$420 in administrative penalties. 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.

TRD-201900936

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 27, 2019



Notice of Correction to Agreed Order Number 25

In the August 24, 2018, issue of the *Texas Register* (43 TexReg 5572), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 25, for Maverick Pit Stop Number 2, LLC dba Martinez Mobil Service Station. The error is as submitted by the commission.

The reference to the company name should be corrected to read: "Maverick Pit Stop Number 2, LLC".

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-201900906

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 26, 2019



Notice of District Hearing: TCEQ Docket No. 2019-0175-DIS

PETITION. TMRY Ridge Limited Partnership filed a petition with the Texas Commission on Environmental Quality (TCEQ) for the creation of Northlake Municipal Management District No. 2 of Denton County (District). The TCEQ will conduct this hearing under the authority of Chapter 375, Texas Local Government Code; Chapter 49 of the Texas Water Code; Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at:

9:30 a.m., Wednesday, May 8, 2019

Building E, Room 201S

12100 Park 35 Circle

Austin, Texas

The proposed District will contain approximately 316.30 acres of land within the corporate limits of the Town of Northlake, Denton County, Texas. The territory to be included in the proposed District is depicted in the vicinity map designated as Exhibit "A", which is attached to this document. The Petition states that the creation of the proposed District would be a benefit to the land within its boundary.

HEARING. As required by the Texas Local Government Code §375.023 and §375.024 and Title 30 of the Texas Administrative Code §293.12(g)(2)(A), the above hearing regarding this application will be held no earlier than 31 days after notice of this hearing is published

in a newspaper with general circulation in the county or counties in which the District is located. The purpose of this hearing is to provide all interested persons the opportunity to appear and offer testimony for or against the proposal contained in the petition.

At the hearing, pursuant to the Chapter 375, Texas Local Government Code; Chapter 49 of the Texas Water Code; and Chapter 293 of Title 30 of the Texas Administrative Code, the TCEQ will determine if creating Northlake Municipal Management District No. 2 of Denton County would be a benefit to the land and property included in the District, or, if there is any opposition to the proposed creation, the Commission may refer the application to the State Office of Administrative Hearings for a contested case hearing on the application.

INFORMATION. For information regarding the date and time this application will be heard before the Commission, please submit written inquiries to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087, or by phone at (512) 239-3300. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Creation Review Team at (512) 239-4691. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

Si desea información en español, puede llamar al (512) 239-0200.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the TCEQ External Relations Division at (800) 687-4040 or (800) RELAY-TX (TDD), at least one week prior to the hearing.

Issued: March 22, 2019

TRD-201900939

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 27, 2019



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the 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 **May 6, 2019**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the com-

mission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 6, 2019**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: ATASCOSA RECYCLING, LLC dba Atascosa Recycling; DOCKET NUMBER: 2017-1009-MSW-E; TCEQ ID NUMBER: RN108789553; LOCATION: 17490 Interstate 35 South #7, Atascosa, Bexar County; TYPE OF FACILITY: asphalt shingle recycling facility; RULES VIOLATED: 30 TAC §328.5(c)(1) and (d), by failing to provide financial assurance for the closure of a recycling facility that stores combustible material outdoors; and 30 TAC §328.5(b)(4), by failing to report updates or changes to information contained in the notice of intent; PENALTY: \$6,837; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: AZIN ENTERPRISES INC. dba Red Corner; DOCKET NUMBER: 2018-1198-PST-E; TCEQ ID NUMBER: RN101540219; LOCATION: 5522 Chiesa Road, Rowlett, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; STAFF ATTORNEY: Kathryn Schroeder, Litigation Division, MC 175, (512) 239-0588; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: CARO WATER SUPPLY CORPORATION; DOCKET NUMBER: 2018-0399-PWS-E; TCEQ ID NUMBER: RN101184141; LOCATION: 3947 State Highway 204, Nacogdoches, Nacogdoches County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(4)(B) (current version at 30 TAC §290.109(d)(4)(B)) and §290.122(c)(2)(A) and (f), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on April 21, 2015, at least one raw groundwater source *Escherichia coli* (*E. coli*) (or other approved fecal indicator) sample from each of the active groundwater sources in use at the time the distribution positive samples were collected and failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to collect at least one groundwater *E. coli* (or other approved fecal indicator) sample from each of the active groundwater sources in use at the time the distribution positive samples were collected during the month of April 2015; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the ED for the January 1 - June 30, 2017, and July 1 - December 31, 2017, monitoring periods; 30 TAC §290.117(e)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the ED for the January 1 - the June 30, 2017, monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements for the January 1 - December 31, 2016, monitoring period; 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 of each year and failing to submit to the TCEQ by July 1st of 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 consistent with compliance monitoring data to the TCEQ for calendar years 2015 and 2016; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2013 - December 31, 2015, monitoring period; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay annual public health service fees and/or any associated late fees for TCEQ Financial Administration Account Number 91740007 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 10417 for calendar years 2015 - 2017; PENALTY: \$976; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: City of Santa Rosa; DOCKET NUMBER: 2016-1657-MWD-E; TCEQ ID NUMBER: RN101918696; LOCATION: approximately 0.4 miles northeast of the intersection of State Highway 107 and Farm-to-Market Road 506, northeast of the City of Santa Rosa, Cameron County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §317.6(b)(1)(D) and (E), by failing to provide and maintain safety equipment for the gas chlorination facilities; 30 TAC §§305.125(1) and (5), 317.3(b)(3) and (e)(5), and 317.4(b)(4) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010330001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and §319.11(d) and TPDES Permit Number WQ0010330001, Monitoring and Reporting Requirements Number 2, by failing to install flow measurement device that conforms to the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the executive director; 30 TAC §317.7(e), by failing to ensure that the facility is completely fenced and that all gates are lockable at all access points; and 30 TAC §305.125(1) and §319.7(c) and TPDES Permit Number WQ0010330001, Monitoring and Reporting Requirements Number 3.b., by failing to ensure that all required records are maintained and made readily available for review upon request; PENALTY: \$15,870; Supplemental Environment Project offset amount of \$15,870 applied to *Clarifier Repair and Improvement*; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: COMAL IRON & METAL, INC.; DOCKET NUMBER: 2018-0187-MLM-E; TCEQ ID NUMBER: RN103219572; LOCATION: 1431 Farm-to-Market Road 306, New Braunfels, Comal County; TYPE OF FACILITY: iron and metal recycling service facility; RULES VIOLATED: 30 TAC §335.261(b)(16)(F)(i) and 40 Code of Federal Regulations (CFR) §273.14(a), by failing to properly label universal waste batteries, or containers used to store used batteries with the words Universal Waste-Batteries or Used Batteries; 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; TCEQ AO Docket Number 2014-1351-MLM-E, Ordering Provisions Numbers 2.a. and 2.b., by failing to comply with the Ordering Provisions of AO Docket Number 2014-1351-MLM-E; and 30 TAC §324.6 and 40 CFR §279.22(c)(1), by failing to mark or clearly label used oil storage containers with the

words Used Oil; PENALTY: \$22,701; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: FIRST TRANSIT, INC.; DOCKET NUMBER: 2017-1550-PST-E; TCEQ ID NUMBER: RN106215130; LOCATION: 640 East Highway 121, Lewisville, Denton County; TYPE OF FACILITY: underground storage tank (UST) system and a fleet refueling facility; RULES VIOLATED: TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(d) and 30 TAC §334.49(a)(4), by failing to provide corrosion protection for the UST system; and 30 TAC §334.7(d)(3) and §334.8(c)(4)(B), by failing to submit a properly completed UST registration and self-certification form and notify the agency of any changes; PENALTY: \$14,979; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Jorge E. Huerta dba Mares Mart; DOCKET NUMBER: 2017-1704-PST-E; TCEQ ID NUMBER: RN102057213; LOCATION: 2210 East Highway 90, Del Rio, Val Verde County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for Class A and B operator; and 30 TAC §334.7(d)(1) and (3) and §334.8(c)(4)(C), by failing to amend, update, or change the UST system registration information as required and notify the agency of any change or additional information regarding the UST system within 30 days after change in ownership of the facility; PENALTY: \$2,813; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(8) COMPANY: Khurram Adnan dba Store T 24 4; DOCKET NUMBER: 2017-1687-PST-E; TCEQ ID NUMBER: RN102395936; LOCATION: 240 East Belt Line Road, Desoto, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.602(a), by failing to designate, train, and certify at least one individual for Class C operator for the facility; 30 TAC §334.605(a), by failing to re-train the UST Class A/B operator within three years of the last training date; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months, or upon major system replacement or modification, whichever occurs first; and THSC, §382.085(b) and 30 TAC §115.246(b)(2) and §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met and failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; PENALTY: \$10,543; STAFF ATTORNEY: Adam Taylor, Litigation Division, MC 175, (512) 239-3345; REGIONAL OFFICE: Dallas-Fort Worth Re-

gional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: NAFIA INVESTMENTS LLC dba Shell Food Mart; DOCKET NUMBER: 2018-0497-PST-E; TCEQ ID NUMBER: RN102351392; LOCATION: 12025 West Loop 1604 South, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$3,600; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: US Ecology Texas, Inc.; DOCKET NUMBER: 2018-0249-MLM-E; TCEQ ID NUMBER: RN101445666; LOCATION: 3277 County Road 69, Robstown, Nueces County; TYPE OF FACILITY: facility that engages in hazardous waste (HW) treatment and disposal; Class 1, 2, and 3 industrial solid waste and non-hazardous waste treatment and disposal; oil reclamation; and deep well HW injection; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0002888000, Effluent Limitations and Monitoring Requirements Number 2, by failing to comply with the maximum permitted effluent limitation for potential hydrogen of 9.0 standard units; 30 TAC §305.125(1), 40 Code of Federal Regulations (CFR) §264.13(b), HW Permit Number 50052, Permit Provisions Numbers II.A. and IV.A., and written waste analysis plan (WAP) Sections 4.0. and 4.1., by failing to comply with the site's written WAP; 30 TAC §305.125(1), 40 CFR §264.13 and §268.40, and HW Permit Number 50052, Permit Provisions Numbers II.A., II.A.7., and IV.A., by failing to prevent the treatment, storage, and disposal of unauthorized HW; 30 TAC §335.69(a)(1)(B) and 40 CFR §262.34(a)(1)(ii) and §265.192(a), by failing to maintain a written assessment reviewed and certified by a registered professional engineer attesting that the system has sufficient structural integrity and is acceptable for storing and treating HW; 30 TAC §305.125(1), 40 CFR §264.175(b)(1) and §264.193(e)(1)(iii), and HW Permit Number 50052, Permit Provisions Numbers II.A., III.A., and V.B.3., by failing to maintain the HW tank secondary containment external liner system free of cracks or gaps; 30 TAC §305.125(1), 40 CFR §264.171, and HW Permit Number 50052, Permit Provisions Numbers II.A. and V.B.4.a., by failing to prevent the storage of wastes containing free liquids in a permitted container storage area (CSA) prohibited from storing wastes with free liquids; 30 TAC §305.125(1) and §335.69(d)(1), 40 CFR §264.171, and HW Permit Number 50052, Permit Provisions Numbers II.A. and III.A., by failing to maintain containers used to store HW in good condition; 30 TAC §305.125(1), 40 CFR §264.15(a) and (c) and §264.196, and HW Permit Number 50052, Permit Provisions Numbers II.A. and III.A., by failing to remedy any deterioration or malfunction discovered by an inspection and to remove as much of the waste as is necessary to prevent further releases of HW into the environment; 30 TAC §305.125(1) and HW Permit Number 50052, Permit Provisions Numbers II.A., III., and V.A.1., by failing to prevent the flow of stormwater onto a permitted unit; 30 TAC §335.6(c), by failing to update the site's Notice of Registration; 30 TAC §305.125(1) and HW Permit Number 50052, Permit Provisions Numbers II.A. and V.A.1., by failing to clearly identify all authorized units with signage indicating "TCEQ Permit Unit Number ___"; 30 TAC §331.67 and Class I Underground Injection Control Permit Number WDW278 (Permit Number WDW278), Permit Provision Number IX., by failing

to maintain complete and accurate waste disposal well records for the life of the well, and three years after closure, and make them available upon request by TCEQ personnel; 30 TAC §331.63(g) and §331.64(c) and (d) and Permit Number WDW278, by failing to test and calibrate quarterly all gauges, pressure sensing, and recording devices and failing to maintain gauges and recording devices in proper working order at all times; 30 TAC §305.125(1), 40 CFR §264.175(b)(1), and HW Permit Number 50052, Permit Provisions Numbers II.A. and III.A., by failing to maintain the secondary containment system for a CSA which is free of gaps and that is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the material is detected and removed; 30 TAC §305.125(1) and §335.173(k) and HW Permit Number 50052, Permit Provisions Numbers II.A. and V.G.4.c., by failing to maintain six inches of cover soil or alternative cover on exposed HW prior to the end of each working day; 30 TAC §305.125(1), 40 CFR §§264.17, 264.31, and 264.198(a)(2) and HW Permit Number 50052, Permit Provisions Numbers II.A. and III.A., by failing to operate the site to minimize the possibility of a fire, explosion, or any release of HW or HW constituents which could threaten human health or the environment; 30 TAC §305.125(1), 40 CFR §268.45(a)(2), and HW Permit Number 50052, Permit Provisions Numbers II.A. and II.A.7., by failing to comply with land disposal restriction treatment standards for HW debris; 30 TAC §335.10(c) and 40 CFR §262.20(a)(1), by failing to comply with Class 1 waste manifest requirements; 30 TAC §305.125(1), 40 CFR §264.15(b)(1), and HW Permit Number 50052, Permit Provisions Numbers II.A. and III.D., by failing to comply with the site's written inspection schedule; 30 TAC §305.125(1), 40 CFR §264.15(d), and HW Permit Number 50052, Permit Provisions Numbers II.A. and III.D., by failing to properly record inspections in an inspection log or summary; 30 TAC §331.63(h) and Permit Number WDW278, Permit Provisions Numbers V.C. and V.D., by failing to maintain chemical and physical characteristics of the injected fluids within specified permit limits; 30 TAC §331.63(f) and Permit Number WDW278, Permit Provision Number VII.C., by failing to ensure the maximum injection rate shall not exceed permitted limits; 30 TAC §331.64(c) and Permit Number WDW278, Permit Provision Number XI.E., by failing to maintain pressure gauges at the wellhead in proper operating condition; 30 TAC §331.67(a) and Permit Number WDW278, Permit Provision Number IX., by failing to maintain complete and accurate records; Texas Health and Safety Code, §382.085(b), 30 TAC §116.115(c), and New Source Review Permit Number 90163, Special Conditions Number 1., by failing to prevent unauthorized emissions; 30 TAC §331.63(e), 40 CFR §146.67(c), and Permit Number WDW278, Permit Provision Number VII.E., by failing to maintain the annulus pressure at least 100 pounds per square inch greater than the injection tubing pressure to prevent leaks from the well into unauthorized zones and to detect well malfunctions; and 30 TAC §331.63(f), 40 CFR §146.67(a), and Permit Number WDW278, Permit Provision Number VII.C., by failing to ensure that the maximum instantaneous injection rate does not exceed 100 gallons per minute; PENALTY: \$457,669; Supplemental Environment Projects offset amounts of \$114,417 applied to *Household Hazardous Waste Collection* and \$114,417 applied to *Cleanup of Unauthorized Trash Dumpsites*; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(11) COMPANY: WESTEX CAPITAL, LTD.; DOCKET NUMBER: 2018-0760-PST-E; TCEQ ID NUMBER: RN102782737; LOCATION: 811 Las Vacas Street, Del Rio, Val Verde County; TYPE OF FACILITY: underground storage tank (UST) system; 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 USTs within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: \$4,750; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-201900901

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 26, 2019

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Notice of Opportunity to Comment on Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 6, 2019**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 6, 2019**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Barbara L. Burch; DOCKET NUMBER: 2018-1016-MSW-E; TCEQ ID NUMBER: RN110433356; LOCATION: 2759 Farm-to-Market Road 2634, Nocona, Montague County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$1,250; STAFF ATTORNEY: Kathryn Schroeder, Litigation Division, MC 175, (512) 239-0588; REGIONAL OFFICE: Abilene Regional

Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201900902

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 26, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of 82L, LLC dba Tega Kid's Superplex: SOAH Docket No. 582-19-3508; TCEQ Docket No. 2017-1637-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - April 25, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed September 28, 2018, concerning assessing administrative penalties against and requiring certain actions of 82L, LLC dba Tega Kid's Superplex, for violations in Lubbock County, Texas, of: Tex. Health & Safety Code §§341.0315(c) and 341.035(a), and 30 Texas Administrative Code §§290.39(e)(1) and (h)(1), 290.41(c)(1)(F), (c)(3)(A), (c)(3)(J), (c)(3)(K), (c)(3)(M), and (c)(3)(O), 290.42(l), 290.43(d)(2), 290.45(d)(2)(B)(v), 290.46(d)(2)(A), (f)(2), (f)(3)(A)(i)(III), (f)(3)(A)(ii)(III), (f)(3)(B)(iii), (f)(3)(D)(ii), (m)(1)(B), and (v), 290.110(b)(4), 290.121(a) and (b) and TCEQ Agreed Order Docket No. 2015-1596-PWS-E, Ordering Provisions Nos. 2.d, f.i., and 2.f.iii.

The hearing will allow 82L, LLC dba Tega Kid's Superplex, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford 82L, LLC dba Tega Kid's Superplex, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of 82L, LLC dba Tega Kid's Superplex to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** 82L, LLC dba Tega Kid's Superplex, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Health & Safety Code ch. 341 and 30 Texas Administrative Code chs. 70 and 290; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ryan Rutledge, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: March 25, 2019

TRD-201900929

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 26, 2019



Notice of Public Meeting Air Permit Renewal: Permit Number 3806

APPLICATION STX Beef Company, LLC, formerly known as Sam Kane Beef Processors, LLC (CN605627124) has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal of Air Quality Permit Number 3806, which would authorize continued operation of the Rendering Facility located at 9001 Leopard Street, Corpus Christi, Nueces County, Texas 78409. Sam Kane Beef Processors submitted the original application on October 12, 2018, as owner and operator of the facility, but then transferred ownership to STX Beef Company, LLC on March 1, 2019. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For the exact location, please refer to the application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.821944&lng=-97.539166&zoom=13&type=r>. The existing facility is authorized to emit the following air contaminants: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide.

The executive director has determined the application is administratively complete and will conduct a technical review of the application. Information in the application indicates that this permit renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

Public Comment/Public Meeting. You may submit public comments to the Office of the Chief Clerk at the address below. The

TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the Executive Director and 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, April 11, 2019, at 7:00 p.m.

Holiday Inn Airport and Convention Center

5549 Leopard Street

Corpus Christi, Texas 78408

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <http://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The application will be available for viewing and copying at the TCEQ central office and the TCEQ Corpus Christi regional office - NRC Building, 6300 Ocean Drive, Unit 5839, Suite 1200, Corpus Christi, Nueces County, Texas. The facility's compliance file, if any exists, is available for public review in the Corpus Christi regional office of the TCEQ. Further information may also be obtained from STX Beef Company, LLC, P.O. Box 9254, Corpus Christi, Texas 78469-9254 or by calling Mr. George Chandlee, Senior Environmental Consultant, Source Environmental Sciences, Inc., at (713) 621-4474.

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.

Notice Issuance Date: March 26, 2019

TRD-201900937

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 27, 2019



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the TCEQ on March 7, 2019, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. Giving Good Luck, Inc. dba Four Seasons Mart & C K Group Enterprise, Inc.; SOAH Docket No. 582-18-2957; TCEQ Docket No. 2016-0359-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Giving Good Luck, Inc. dba Four Seasons Mart & C K Group Enterprise, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Meghan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201900938

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 27, 2019



Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: 8-Day Pre Election Report due October 29, 2018 for Candidates

Stephen A. West, 209 W. 2nd St., Ste. 213, Fort Worth, Texas 76102

Deadline: Semiannual Report due January 15, 2019 for Candidates

Brennen P. Dunn, 2646 S. Loop West, Ste. 305, Houston, Texas 77054

Maribel Flores, 493 Madison St., Eagle Pass, Texas 78852

Aaron R. Gutknecht, 3441 Wren Ave., Fort Worth, Texas 76133

Lauren L. LaCount, 2000 Brazosport Blvd. N., Richwood, Texas 77531

Kendall W. Scudder, P.O. Box 57196, Dallas, Texas 75357-1961

Melissa Shorey, 609 Aqua Dr., Dallas, Texas 75218

Gena N. Slaughter, 111 W. Spring Valley Rd., Ste. 250, Richardson, Texas 75081

Eston H. Williams, 107 E. Kaufman St., Mabank, Texas 75147

Deadline: Lobby Activities Report due September 10, 2018

Karen Steakley, 11410 Century Oaks Terrace, Ste. A03A, Austin, Texas 78758

Deadline: Lobby Activities Report due October 10, 2018

Kelly McBeth, P.O. Box 5100, Austin, Texas 78763

Solomon P. Ortiz, Jr., P.O. Box 270909, Corpus Christi, Texas 78427

Christopher Walker, 10600 Buffalo Speedway, Houston, Texas 77054

Deadline: Lobby Activities Report due November 13, 2018

Pamela McPeters, 1417 Westmoor Dr., Austin, Texas 78723
Jerry Philips, Capitol Station, P.O. Box 13506, Austin, Texas 78711
Christopher Walker, 10600 Buffalo Speedway, Houston, Texas 77054
Deadline: Lobby Activities Report due December 10, 2018

Court Koenning, P.O. Box 70073, Houston, Texas 77270
Deadline: Lobby Activities Report due January 10, 2019
Solomon P. Ortiz, Jr., P.O. Box 270909, Corpus Christi, Texas 78427

TRD-201900850
Ian Steusloff
Interim Executive Director
Texas Ethics Commission
Filed: March 21, 2019

◆ ◆ ◆
General Land Office

Notice of Deepwater Port License Application

Notice is hereby given that SPOT Terminal Services, LLC (SPOT) has submitted an application to the Maritime Administration (MARAD) and the U.S. Coast Guard for a license under the Deepwater Port Act of 1974 to own, construct, and operate a deepwater port in the Gulf of Mexico for the export of domestically produced oil. The proposed deepwater port would allow for the loading of Very Large Crude Carriers (VLCCs) via a single point mooring buoy system located approximately 27.2 to 30.8 nautical miles off the coast of Freeport, Texas.

As described in the application, the overall proposed project would include construction of a 140-acre onshore storage terminal facility (Oyster Creek Terminal) in Brazoria County, and equipment including the installation of four booster pumps at the existing Enterprise Crude Houston Terminal (ECHO) in Harris County. Three onshore 36-inch crude oil pipelines would also be constructed, consisting of one 50.1-mile pipeline from the ECHO to the Oyster Creek Terminal in Harris and Brazoria Counties and two co-located 12.2-mile pipelines from the Oyster Creek Terminal to the shore crossing in Brazoria County. These pipelines would join the 40.8 nautical miles of offshore pipelines crossing state and federal waters in the Gulf, terminating at a single point mooring (SPM) buoy system in a water depth of approximately 115 feet. The proposed SPM system would be located within Galveston Area Outer Continental Shelf lease block 463, approximately 27.2 to 30.8 nautical miles off the coast of Freeport, Texas.

The SPOT deepwater port license application may be viewed at <http://www.regulations.gov> under docket number MARAD-2019-0011. The docket will also be the repository for all associated Federal Register notices, communications, comments, and the Draft and Final Environmental Impact Statement. Pursuant to the criteria provided in the Deepwater Port Act of 1974 (33 U.S.C. §§1501-1524), Texas is the designated Adjacent Coastal State for this deepwater port license application. For additional information regarding deepwater ports, and the statutes and regulations governing their licensing, including the application review process for the proposed SPOT deepwater port, please refer to the notice published by the MARAD in the August 6, 2018, edition of the *Federal Register* (83 FR 38455).

TRD-201900900
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: March 25, 2019



Texas Health and Human Services Commission

Notice of Public Hearing to Amend Medicaid Payment Rates for Small and Large, State-Operated Intermediate Care Facilities for Individuals with an Intellectual Disability

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on April 10, 2019, at 9:00 a.m., to receive public comment to the following amended interim per diem Medicaid reimbursement rates for small and large, state-operated Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID).

The public hearing will be held in the Public Hearing Room of the Brown-Heatly Building located at 4900 N. Lamar Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard. HHSC will broadcast the public hearing, but it cannot accept testimony from persons watching remotely. The broadcast can be accessed at <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>, and it will be archived for access on demand at the same website. The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursement rates.

Proposal. HHSC proposes the following amended interim per diem reimbursement rates for small and large, state-operated ICF/IID to be effective September 1, 2018:

Small State-Operated ICF/IID

Proposed interim daily rate: \$718.14

Large State-Operated ICF/IID - Medicaid Only clients

Proposed interim daily rate: \$865.76

Large State-Operated ICF/IID - Dual-eligible Medicaid/Medicare clients

Proposed interim daily rate: \$828.28

HHSC is proposing these interim rates so that adequate funds will be available to serve individuals residing in these facilities. The proposed interim rates account for actual and projected increases in costs to operate these facilities.

Methodology and Justification. The proposed amended payment rates were determined in accordance with Title 1 of the Texas Administrative Code §355.456, which addresses the reimbursement methodology for ICF/IID.

Briefing Package. A briefing package describing the proposed amended payment rates will be available at <http://rad.hhs.texas.gov/rate-packets> on or after March 29, 2019. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Rate Analysis Department by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at RAD-LTSS@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed amended payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by email to LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas 78751-2316.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401 at least 72 hours prior to the hearing so appropriate arrangements can be made.

TRD-201900942

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: March 27, 2019



Department of State Health Services

Designation of Practices Serving a Medically Underserved Population

The Texas Department of State Health Services (department) is required under Texas Occupations Code §157.051 to designate practices serving a medically underserved population. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as practices serving a medically underserved population:

-MD Kids Pediatrics, 181 Gus Rallis Drive, El Paso, Texas 79932;

-MD Kids Pediatrics, 4659 Cohen Avenue, Suite B, El Paso, Texas 79924; and

-MD Kids Pediatrics, 1512 North Zaragoza Road, Suite A-1, El Paso, Texas 79936.

These designations are based on eligibility as practices serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on these designations may be directed to Anne Nordhaus, MA, Research Specialist, Health Professions Resource Center - Mail Code 1898, Center for Health Statistics, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; (512) 776-3862 (phone); (512) 776-7344 (fax); or hprc@dshs.texas.gov (email). Comments will be accepted for 30 days from the publication date of this notice.

TRD-201900899

Barbara L. Klein

General Counsel

Department of State Health Services

Filed: March 25, 2019



Licensing Actions for Radioactive Materials

During the first half of January, 2019, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
The Woodlands	Optimus Steel L.L.C.	L06974	The Woodlands	00	01/15/19
Throughout TX	Henderson Hospital L.L.C. dba UT Health East Texas Henderson Hospital	L06972	Henderson	00	01/03/19
Tyler	Tyler Regional Hospital L.L.C. dba UT Health East Texas Tyler Regional Hospital	L06973	Tyler	00	01/04/19

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Abilene	Texas Oncology P.A.	L06853	Abilene	02	01/10/19
Arlington	Columbia Medical Center of Arlington Subsidiary L.P. dba Medical Center of Arlington	L02228	Arlington	86	01/09/19
Austin	Austin Heart P.L.L.C.	L04623	Austin	97	01/09/19
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Centers	L06335	Austin	29	01/11/19
Bay City	Matagorda County Hospital District dba Matagorda Regional Medical Center	L02701	Bay City	22	01/04/19
Bedford	Texas Oncology P.A.	L05550	Bedford	38	01/09/19
Cleburne	Universal Pressure Pumping Inc.	L06871	Cleburne	03	01/03/19
College Station	Texas A&M University	L05683	College Station	38	01/04/19
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	220	01/02/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Dallas	Medi Physics Inc. dba GE Healthcare	L05529	Dallas	47	01/02/19
Dallas	The Center for Molecular Imaging L.P. dba Southwest Diagnostic Center for Molecular Imaging	L05715	Dallas	14	01/11/19
Dallas	UT Southwestern Medical Center	L06663	Dallas	20	01/11/19
Dallas	Jubilant Draximage Radiopharmacies Inc. dba Triad Isotopes	L06943	Dallas	03	01/10/19
El Paso	Professional Services Industries Inc.	L02476	El Paso	31	01/07/19
Freeport	Solvay USA Inc.	L02807	Freeport	43	01/04/19
Houston	Baylor College of medicine	L00680	Houston	126	01/14/19
Houston	Memorial Hermann Health System dba Memorial Hermann Katy Hospital	L03052	Houston	94	01/09/19
Houston	Gulf Coast Regional Blood Center	L04755	Houston	10	01/11/19
Houston	Memorial Hermann Medical Group	L06430	Houston	32	01/10/19
Houston	Memorial Hermann Health System dba Memorial Hermann Cypress Hospital	L06832	Houston	13	01/10/19
Houston	Cy-Fair Medical Center Hospital L.L.C. dba Cypress Fairbanks Medical Center Hosp.	L06907	Houston	02	01/04/19
McKinney	Baylor Medical Centers at Garland and McKinney dba Baylor Scott & White Medical Center – McKinney	L06470	McKinney	13	01/09/19
Nacogdoches	TH Healthcare Ltd. A Limited Teas Partnership dba Nacogdoches Medical Center	L02853	Nacogdoches	53	01/11/19
Orange	E I Du Pont De Nemours & Co.	L00005	Orange	84	01/08/19
The Woodlands	Baylor St. Luke's Medical Group	L06875	The Woodlands	03	01/02/19
Throughout TX	Pega Development L.L.C.	L06636	Amarillo	02	01/11/19
Throughout TX	Integrity Testlabs L.L.C.	L06756	Clute	05	01/07/19
Throughout TX	Texas A&M University	L00448	College Station	152	01/07/19
Throughout TX	Technology Service Professionals Inc.	L06570	Dallas	08	01/03/19
Throughout TX	Baker Hughes Oilfield Operations L.L.C.	L00446	Houston	194	01/02/19
Throughout TX	Testmasters Inc.	L03651	Houston	33	01/08/19
Throughout TX	Sentinel Integrity Solutions Inc.	L06735	Houston	07	01/03/19
Throughout TX	FMC Technologies Inc.	L06765	Houston	12	01/04/19
Throughout TX	Pavetex Engineering L.L.C. dba Pavetex	L06407	Lubbock	15	01/10/19
Throughout TX	Solvay Specialty Polymers USA L.L.C.	L06515	Orange	02	01/15/19
Throughout TX	Hunter Industries ltd.	L04175	San Marcos	13	01/03/19
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	72	01/09/19
Waxahachie	Baylor Medical Center at Waxahachie dba Baylor Scott & White Medical Center – Waxahachie	L04536	Waxahachie	54	01/04/19
Wichita Falls	Texas Oncology P.A.	L06288	Wichita Falls	12	01/11/19
Yoakum	Yoakum Community Hospital	L05913	Yoakum	05	01/08/19

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Austin	ECS Southwest L.L.P.	L05319	Austin	14	01/07/19
Baytown	Edward W. Leahey M.D., P.A.	L06014	Baytown	04	01/11/19
Freeport	BASF Corporation	L01021	Freeport	67	01/03/19
Houston	Complete Cardiac Care P.A.	L05218	Houston	13	01/14/19
Houston	Texas Steel Conversion Inc.	L06185	Houston	01	01/02/19

RENEWAL OF LICENSES ISSUED (continued):

McAllen	Rio Grande Valley Isotopes L.L.C.	L06202	McAllen	08	01/14/19
Midland	Texas Oncology P.A. dba Allison Cancer Center	L04905	Midland	25	01/07/19
Round Rock	Heart and Vascular of Central Texas	L06045	Round Rock	06	01/14/19
Sugar Land	Texas Oncology P.A. dba Texas Oncology Cancer Center Sugar Land	L05816	Sugar Land	19	01/14/19

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Arlington	USMD Diagnostic Services L.L.C.	L06705	Arlington	09	01/14/19
Austin	Austin Nuclear Pharmacy Inc.	L05591	Austin	25	01/07/19
Carthage	East Texas Medical Center Carthage	L02540	Carthage	44	01/07/19
Fort Worth	Alcon Laboratories Inc.	L01281	Fort Worth	44	01/10/19
Tyler	East Texas Medical Center	L00977	Tyler	170	01/07/19

EMERGENCY ORDERS ISSUED:

Name	Type of Order	License Number	Address	Action	Date of Issuance
Medical Associates of Brownsville PA	Emergency Order	M01159	425 East Los Ebanos Boulevard, Suite 100A, Brownsville, Texas	Cease and desist from performing mammography services; all mammography units detained	01/11/19

TRD-201900903
 Barbara L. Klein
 General Counsel
 Department of State Health Services

Filed: March 26, 2019



Licensing Actions for Radioactive Materials

During the second half of January, 2019, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Gainesville	Gainesville Community Hospital Inc. dba North Texas Medical Center	L06975	Gainesville	00	01/16/19
Houston	Veterinary Specialists of Texas PC dba Gulf Coast Veterinary Specialists	L06978	Houston	00	01/30/19
Throughout TX	Oliden Technology L.L.C.	L06977	Stafford	00	01/30/19
Waco	J. Phillip Myatt M.D., P.L.L.C. dba Waco Heart and Vascular	L06976	Waco	00	01/16/19

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Arlington	Heartplace P.A.	L05855	Arlington	15	01/18/19
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	162	01/23/19
Beaumont	Christus Health Southeast Texas dba Christus Southeast Texas St. Elizabeth	L00269	Beaumont	125	01/25/19
Brownsville	VHS Brownsville Hospital Company L.L.C. dba Valley Baptist Medical Center Brownsville	L06500	Brownsville	06	01/16/19
College Station	Scott & White Hospital – College Station dba Baylor Scott & White Medical Center – College Station	L06557	College Station	12	01/18/19
Corpus Christi	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Svcs.	L04043	Corpus Christi	56	01/25/19
Cuero	Dewitt Medical District dba Cuero Regional Hospital	L02448	Cuero	31	01/18/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Dallas	Baylor University Medical Center	L01290	Dallas	145	01/11/19
Dallas	Medi Physics Inc. dba GE Healthcare	L05529	Dallas	48	01/18/19
Denison	UHS of Texoma Inc. dba Texoma Medical Center	L01624	Denison	71	01/16/19
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Memorial Campus	L02353	El Paso	140	01/31/19
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Sierra Campus	L02365	El Paso	107	01/31/19
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Sierra Campus	L02365	El Paso	106	01/24/19
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Sierra Campus	L02365	El Paso	105	01/16/19
Houston	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	179	01/22/19
Houston	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Services	L01911	Houston	161	01/29/19
Houston	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Houston	131	01/14/19
Houston	University of Texas Health Science Center at Houston	L03685	Houston	38	01/15/19
Houston	Methodist Health Centers dba Houston Methodist Willowbrook Hospital	L05472	Houston	62	01/22/19
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	138	01/30/19
Houston	Cardinal Health	L05536	Houston	61	01/18/19
Irving	Healthcare Associates of Irving L.L.P.	L05371	Irving	17	01/18/19
Mansfield	Healthscan Imaging L.L.C.	L06856	Mansfield	07	01/18/19
McKinney	Texas Oncology P.A. dba Texas Oncology	L06947	McKinney	02	01/23/19
Mount Pleasant	Titus County Memorial Hospital dba Titus Regional Medical Center	L02921	Mount Pleasant	53	01/23/19
Odessa	Ector County Hospital District dba Medical Center Hospital	L01223	Odessa	103	01/18/19
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	260	01/17/19
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	166	01/23/19
San Antonio	Cardiovascular Associates of San Antonio P.A.	L04996	San Antonio	23	01/23/19
Sweeny	Phillips 66 Company Sweeny Refinery	L06524	Sweeny	15	01/17/19
Temple	Scott & White Memorial Hospital dba Baylor Scott & White Medical Center – Temple	L00331	Temple	113	01/28/19
Texarkana	Christus Health ARK-LA-TEX dba Christus St. Michael Health Systems	L04805	Texarkana	36	01/18/19
Texarkana	Red River Pharmacy Services	L05077	Texarkana	30	01/18/19
Throughout TX	Texas Department of Transportation	L00197	Austin	191	01/24/19
Throughout TX	Inspection Associates Inc.	L06601	Cypress	12	01/18/19
Throughout TX	National Inspection Services L.L.C.	L05930	Fort Worth	46	01/17/19
Throughout TX	Uranium Energy Corporation	L06127	Goliad	10	01/16/19
Throughout TX	Frost Geosciences Inc.	L06015	Helotes	08	01/18/19
Throughout TX	Fugro Consultants Inc.	L00058	Houston	64	01/24/19
Throughout TX	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Svcs.	L01911	Houston	160	01/17/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	Texas Gamma Ray L.L.C. dba TGR Industrial Services	L05561	Houston	119	01/30/19
Throughout TX	Stearns Conrad and Schmidt Consulting Engineers Inc. dba SCS Engineers	L06209	Houston	05	01/17/19
Throughout TX	Stronghold Inspection Ltd.	L06695	La Porte	04	01/18/19
Throughout TX	Intertek Asset Integrity Management Inc.	L06801	Longview	07	01/16/19
Throughout TX	Crossbridge Compliance L.L.C.	L06904	Longview	04	01/16/19
Throughout TX	Raba-Kistner Consultants Inc. dba Raba-Kistner-Brytest Consultants Inc.	L01571	San Antonio	89	01/17/19
Throughout TX	Hunter Industries Ltd.	L04175	San Marcos	14	01/17/19
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	211	01/17/19
Waxahachie	Baylor Medical Center at Waxahachie dba Baylor Scott & White Medical Center – Waxahachie	L04536	Waxahachie	55	01/18/19

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Brownsville	Jaime L. Silva M.D., P.A.	L05245	Brownsville	08	01/18/19
Dallas	Texas Oncology P.A. dba Sammons Cancer Center	L04878	Dallas	63	01/22/19
El Campo	El Campo Memorial Hospital	L02664	El Campo	19	01/30/19
Throughout TX	Cardinal Health 414 L.L.C. dba Cardinal Nuclear Pharmacy	L02048	Dallas	153	01/28/19

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Beaumont	Gerdau Ameristeel US Inc.	L02122	Beaumont	33	01/17/19
Burleson	North Texas Heart and Vascular P.L.L.C.	L06866	Burleson	01	01/18/19
Gainesville	Gainesville Hospital District dba North Texas Medical Center	L02585	Gainesville	35	01/17/19
Henderson	East Texas Medical Center Henderson	L06281	Henderson	05	01/30/19
Odessa	Suresh N. Gadasalli M.D., P.A.	L05156	Odessa	17	01/30/19
Pecos	Magnum Midstream L.P.	L06885	Pecos	05	01/24/19
Quitman	East Texas Medical Center Quitman	L06387	Quitman	02	01/30/19
Temple	Specialty Pharmacy Services Inc.	L04883	Temple	34	01/18/19

TRD-201900905
 Barbara L. Klein
 General Counsel
 Department of State Health Services
 Filed: March 26, 2019

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 Licensing Actions for Radioactive Materials

During the first half of February, 2019, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Athens	Athens Hospital L.L.C. dba UT Health East Texas Athens Hospital	L06979	Athens	00	02/01/19
Somerset	Alamo Nuclear Pharmacy Services Inc.	L06981	Somerset	00	02/06/19
Throughout TX	All American Inspection L.L.C.	L06980	Beaumont	00	02/04/19
Throughout TX	Socon Sonar Well Services Inc.	L06982	Stafford	00	02/12/19

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Arlington	USMD Hospital at Arlington	L05727	Arlington	27	02/14/19
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	163	02/07/19
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's North Austin Medical Center	L04910	Austin	105	02/13/19
Austin	Westlake Surgical L.P. dba The Hospital at Westlake Medical Center	L06234	Austin	07	02/11/19
Austin	The University of Texas at Austin Dell Medical School	L06949	Austin	02	02/13/19
Austin	The University of Texas at Austin Dell Medical School	L06949	Austin	01	02/05/19
Bedford	Carter Blood care	L00630	Bedford	47	02/04/19
Burleson	Heartplace P.A.	L05883	Burleson	26	02/06/19
Cleburne	Texas Health Harris Methodist Hospital Cleburne	L02039	Cleburne	49	02/12/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Conroe	CHCA Conroe L.P. dba Conroe Regional Medical Center	L01769	Conroe	105	02/11/19
Conroe	Chevron Phillips Chemical Company L.P. dba Drilling Specialties Company A Division of Chevron Phillips Chemical Company	L04825	Conroe	20	02/11/19
Dalhart	Dallam Hartley Counties Hospital District dba Coon Memorial Hospital	L06365	Dalhart	02	02/04/19
Dallas	Cardinal Health 414 L.L.C. dba Cardinal Nuclear Pharmacy Services	L02048	Dallas	154	02/14/19
Dallas	Texas Oncology P.A. dba Sammons Cancer Center	L04878	Dallas	64	02/05/19
Dallas	Dallas Medical Center L.L.C.	L06584	Dallas	14	02/08/19
Denton	Texas Woman's University	L00304	Denton	67	02/11/19
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence East Campus	L06152	El Paso	31	02/08/19
Fort Worth	North Texas MCA L.L.C. dba Medical City Alliance	L06687	Fort Worth	08	02/09/19
Frisco	Tenet Frisco Ltd. dba Baylor Scott & White Medical Center Centennial	L05768	Frisco	19	02/01/19
Harlingen	Harlingen Medical Center	L05587	Harlingen	10	02/01/19
Houston	Digirad Imaging Solutions Inc.	L05414	Houston	43	02/01/19
Houston	Medi Physics Inc. dba GE Healthcare	L05517	Houston	29	02/04/19
Houston	Houston Cyclotron Partners L.P. dba Cyclotope	L05585	Houston	31	02/08/19
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	46	02/06/19
Houston	The Methodist Hospital Research Institute dba Houston Methodist Research Institute	L06383	Houston	12	02/13/19
Houston	Memorial Hermann Health System dba Memorial Hermann Texas Medical Center	L06439	Houston	16	02/08/19
Kingwood	Lieber-Moore Cardiology Associates dba Texas Cardiology Associates of Houston	L04622	Kingwood	20	02/12/19
La Porte	The Chemours Company FC L.L.C.	L06683	La Porte	04	02/12/19
La Porte	Bayport Polymers L.L.C. dba Bay-pol L.L.C.	L06922	La Porte	03	02/04/19
Lakeway	Scott & White Hospital – Round Rock dba Baylor Scott & White Medical Center – Lakeway	L06849	Lakeway	05	02/08/19
Lancaster	Lancaster Regional Hospital L.P.	L06847	Lancaster	03	02/01/19
Lubbock	ISORX Texas Ltd.	L05284	Lubbock	33	02/04/19
Lubbock	Methodist Children's Hospital dba Covenant Children's Hospital	L06852	Lubbock	01	02/08/19
Midland	Midland County Hospital District dba Midland Memorial Hospital	L00728	Midland	117	02/07/19
Nacogdoches	TH Healthcare Ltd. A Limited Texas Partnership dba Nacogdoches Medical Center	L02853	Nacogdoches	54	02/11/19
San Angelo	Shannon Medical Center	L02174	San Angelo	76	02/04/19
Seguin	Craig Cardiovascular Center P.A.	L06623	Seguin	01	02/12/19
Stafford	Oliden Technology L.L.C.	L06977	Stafford	01	02/01/19
The Woodlands	Baylor St. Luke's Medical Group	L06875	The Woodlands	03	02/04/19
Throughout TX	I.I.A. Field Services L.L.C.	L06933	Abilene	02	02/12/19
Throughout TX	Recon Petrotechnologies Oklahoma Inc.	L06839	Alvarado	02	02/13/19
Throughout TX	City of Amarillo	L02320	Amarillo	29	02/12/19
Throughout TX	Nondestructive & Visual Inspection L.L.C.	L06162	Carthage	25	02/14/19
Throughout TX	Technology Service Professionals Inc.	L06570	Dallas	09	02/07/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	TSIT Engineering & Consulting L.L.C.	L05697	Fort Worth	23	02/13/19
Throughout TX	The University of Texas Medical Branch	L01299	Galveston	111	02/05/19
Throughout TX	Varco L.P.	L00287	Houston	152	02/05/19
Throughout TX	The Methodist Hospital dba Houston Methodist	L00457	Houston	206	02/06/19
Throughout TX	Liberty Oilfield Services L.L.C.	L06901	Odessa	02	02/01/19
Throughout TX	Quantum Technical Services L.L.C.	L06406	Pasadena	18	02/07/19
Throughout TX	Oilpatch NDT L.L.C.	L06718	Seabrook	11	02/06/19
Throughout TX	Fehr's Metal Building Construction L.L.C.	L06615	Seminole	01	02/07/19
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	158	02/05/19
Throughout TX	Schlumberger Technology Corporation (STC)	L06880	Sugar Land	05	02/13/19
Wichita Falls	Kell West Regional Hospital L.L.C.	L05943	Wichita Falls	18	02/04/19

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Denton	Tan veer A. Qureshi M.D., P.A.	L04815	Denton	09	02/13/19
Houston	Memorial Hermann Health System	L03772	Houston	156	02/11/19
Paris	Advanced Heart Care P.A.	L05290	Paris	43	02/05/19

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Houston	City of Houston Drinking Water Operations Laboratory	L06657	Houston	02	02/04/19
Amarillo	Southwestern Public Service Company dba Xcel Energy	L05238	Amarillo	13	02/07/19
Houston	University of Texas Health Science Center at Houston	L03685	Houston	39	02/12/19
Brenham	Sawmack Geotechnical & Testing L.L.C.	L06624	Brenham	03	02/12/19
Stephenville	Texas Health Harris Methodist Hospital Stephenville	L03097	Stephenville	36	02/08/19
Throughout TX	PVR Engineering & Testing Inc.	L06725	Houston	04	02/11/19

TRD-201900907
 Barbara L. Klein
 General Counsel
 Department of State Health Services
 Filed: March 26, 2019

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 Licensing Actions for Radioactive Materials

During the second half of February, 2019, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Henderson	Henderson Hospital L.L.C. dba UT Health East Texas Henderson Hospital	L06983	Henderson	00	02/20/19
Houston	Cardionavix L.L.C.	L06984	Houston	00	02/22/19
Irving	Gregory A. Echt M.D., P.L.L.C. dba Choice Cancer Care	L06985	Irving	00	02/26/19
Throughout TX	EST Inc.	L06986	Melissa	00	02/28/19

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Arlington	Heartplace P.A.	L05855	Arlington	16	02/27/19
Austin	Austin Radiological Association	L00545	Austin	218	02/26/19
Austin	NXP USA Inc. dba NXP Semiconductors USA Inc.	L05347	Austin	17	02/21/19
Austin	ARA St. David's Imaging L.P.	L05862	Austin	93	02/27/19
Austin	Regional Engineering Inc.	L06471	Austin	09	02/25/19
Austin	Central Texas Medical Specialists P.L.L.C. dba Austin Cancer Centers	L06618	Austin	18	02/19/19
Corpus Christi	NQS Inspection Ltd.	L06262	Corpus Christi	16	02/28/19
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	221	02/21/19
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	222	02/28/19

AMENDMENTS TO EXISTING LICENSES ISSUED:

Dallas	Texas Health Physicians Group dba Texas Health Presbyterian Heart and Vascular Group	L06578	Dallas	05	02/22/19
Denton	Texas Womans University	L00304	Denton	68	02/25/19
El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	77	02/28/19
El Paso	El Paso Healthcare System Ltd. dba Las Palmas Medical Center a Campus of Las Palmas De Sol Healthcare	L02715	El Paso	96	02/28/19
Friendswood	ISO Tex Diagnostics Inc.	L02999	Friendswood	52	02/22/19
Ft. Worth	Columbia Plaza Medical Center of Fort Worth Subsidiary L.P. dba Medical City Fort Worth	L02171	Ft. Worth	63	02/19/19
Houston	The Methodist Hospital dba Houston Methodist	L00457	Houston	207	02/19/19
Houston	Medical Clinic of Houston L.L.P.	L01315	Houston	39	02/15/19
Houston	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Services	L01911	Houston	162	02/20/19
Houston	Spectracell Laboratories Inc.	L04617	Houston	18	02/25/19
Mesquite	Texas Health Physicians Group dba Mesquite Heart Center P.A.	L05132	Mesquite	22	02/26/19
Midland	Certified Compliance Laboratories Inc.	L05499	Midland	11	02/28/19
Orange	Arlanxeo USA L.L.C.	L06782	Orange	05	02/20/19
Round Rock	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Round Rock Medical Center	L03469	Round Rock	59	02/26/19
Rowlett	Lake Pointe Operating Company L.L.C. dba Baylor Scott & White Medical Center – Lake Pointe	L04060	Rowlett	20	02/27/19
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	261	02/15/19
San Antonio	University of Texas at San Antonio	L01962	San Antonio	71	02/22/19
San Antonio	Southwest Research Institute	L04958	San Antonio	21	02/19/19
The Woodlands	Methodist Health Center dba Houston Methodist The Woodlands Hospital	L06861	The Woodlands	04	02/21/19
Throughout TX	Cardiac Imaging Inc.	L06565	Beaumont	16	02/28/19
Throughout TX	Irisndt Inc.	L06435	Houston	22	02/19/19
Throughout TX	Versa Integrity Group Inc.	L06669	Houston	18	02/21/19
Throughout TX	C & J Spec-Rent Services Inc.	L06712	Houston	11	02/22/19
Throughout TX	4A Inspection L.L.C.	L06716	Houston	03	02/27/19
Throughout TX	SET Environmental Inc.	L06837	Houston	03	02/19/19
Throughout TX	Petrochem Inspection Services Inc. dba TUV SUD America Chemical Oil and Gas	L04460	La Porte	30	02/26/19
Throughout TX	Intertek Asset Integrity Management Inc.	L06801	Longview	08	02/15/19
Throughout TX	Tetra Tech Inc.	L06868	Midland	04	02/19/19
Throughout TX	Oilpatch NDT L.L.C.	L06718	Seabrook	12	02/25/19
Throughout TX	Blanchard Refining Company L.L.C.	L06526	Texas City	16	02/21/19
Throughout TX	TSI Laboratories Inc.	L04767	Victoria	20	02/19/19
Webster	Clear Lake Regional Medical Center Inc.	L01680	Webster	102	02/20/19
Webster	Texas Oncology P.A. dba Deke Slayton Memorial Cancer Center	L06465	Webster	08	02/15/19

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Austin	Austin Radiological Association	L00545	Austin	217	02/19/19

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Dallas	GME Consulting Services Inc.	L05128	Dallas	14	02/21/19
Irving	Gregory A. Echt M.D., P.A.	L06078	Irving	17	02/26/19
Throughout TX	House Engineering and Construction Inc.	L04702	Longview	19	02/19/19
Tyler	Tyler Cardiovascular Consultants P.A.	L06519	Tyler	03	02/20/19

TRD-201900908
 Barbara L. Klein
 General Counsel
 Department of State Health Services
 Filed: March 26, 2019

Written comment should be sent by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, TX 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-0070.

TRD-201900915
 David Cervantes
 Acting Director
 Texas Department of Housing and Community Affairs
 Filed: March 26, 2019

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Texas Department of Housing and Community Affairs

Announcement of the Public Comment Period for the Draft 2019 State of Texas Consolidated Plan Annual Performance Report - Reporting on Program Year 2018

The Texas Department of Housing and Community Affairs (TDHCA) announces the opening of a 15-day public comment period for the *State of Texas Draft 2019 Consolidated Plan Annual Performance Report - Reporting on Program Year 2018 (the Report)*, as required by the U.S. Department of Housing and Urban Development (HUD). The Report is required as part of the overall requirements governing the State's consolidated planning process. The Report is submitted in compliance with 24 CFR §91.520, Consolidated Plan Submissions for Community Planning and Development Programs. The 15-day public comment period begins Thursday, April 4, 2019, and continues until 5:00 p.m., Austin local time, on Friday, April 19, 2019.

The Report gives the public an opportunity to evaluate the performance of the past program year for five HUD programs: the Community Development Block Grant Program administered by the Texas Department of Agriculture, the Housing Opportunities for Persons with AIDS Program administered by the Texas Department of State Health Services, and the Emergency Shelter Grants, HOME Investment Partnerships, and National Housing Trust Fund programs, administered by TDHCA. The following information is provided for each of the programs covered in the Report: a summary of program resources and programmatic accomplishments; a series of narrative statements on program performance over the past year; a qualitative analysis of program actions and experiences; and a discussion of program successes in meeting program goals and objectives.

Beginning April 4, 2019, the Report will be available on the Department's website at <http://www.tdhca.state.tx.us/public-comment.htm>. A hard copy can be requested by contacting the Housing Resource Center at P.O. Box 13941, Austin, Texas 78711-3941 or by calling (512) 475-3976.

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Notice of Public Hearings and Public Comment Period on the Draft State of Texas Analysis of Impediments to Fair Housing Choice

The Analysis of Impediments to Fair Housing Choice (AI) is a process that recipients of U.S. Department of Housing and Urban Development (HUD) Community Planning and Development (CPD) grant funds, undertake as part of their obligation to affirmatively further fair housing (AFFH) under the Fair Housing Act.

At the state level, the Texas Department of Housing and Community Affairs (TDHCA), the Texas Department of Agriculture (TDA), the Texas General Land Office (GLO), and the Texas Department of State Health Services (DSHS), are responsible for carrying out the work of the AI because these agencies receive and disburse HUD Community Planning and Development (CPD) funds. TDHCA lead the draft AI development process on behalf of the all Texas state agencies that receive CPD funds.

To garner input on the draft AI, a public comment period will be open from March 25 through May 6, 2019, and 13 public hearings, one in each TDHCA State Service Region, will be held during the public comment period. Comments received after 5:00 p.m., Austin local time on May 6, 2019, will not be accepted. The draft AI may be accessed from TDHCA's Public Comment Web page at: <http://www.tdhca.state.tx.us/public-comment.htm>.

The public hearing schedule is as follows:

Wednesday, April 10, 2019, 10:30 a.m.

Haven for Hope Volunteer Center

1 Haven for Hope Way, San Antonio, Texas, 78207

Thursday, April 11, 2019, from 4:00 p.m. to 5:30 p.m., or the conclusion of public comment, whichever occurs later.

City Hall Council Chambers

101 N. College Street Killeen, Texas 76541

Friday, April 12, 2019, 10:00 a.m.

Texas Health and Human Services

909 West 45th Street, Room 164, Austin, Texas 78751

Monday, April 15, 2019, 10:00 a.m.

City of El Paso Council Chambers

300 N. Campbell, El Paso, Texas 79901

Tuesday, April 16, 2019, 9:30 a.m.

MLK Center

2300 East Butternut Lane, Midland, Texas 79701

Tuesday, April 16, 2019, from 4:30 p.m. to 5:30 p.m., or the conclusion of public comment, whichever occurs later.

City of Lubbock Council Chambers

1625 13th Street, Lubbock, Texas 79401

Wednesday, April 17, 2019, 1:00 p.m.

Nortex Regional Planning Commission

4309 Old Jacksboro Hwy, Suite 200, Wichita Falls, Texas 76302

Thursday, April 18, 2019, 10:30 a.m.

J. Erik Jonsson Central Library, Stone Room (7th floor)

1515 Young Street, Dallas, Texas 75201

Thursday, April 18, 2019, 4:00 p.m.

Maude Cobb Convention & Activity Center

100 Grand Blvd, Longview, Texas 75604

Tuesday, April 30, 2019, 1:00 p.m.

Hidalgo County Commissioners Courtroom

Administration Building Annex III

100 East Cano Street, Edinburg, Texas 78539

Wednesday, May 01, 2019, 9:30 a.m.

City of Victoria Council Chambers

107 W. Juan Linn Street, Victoria, Texas 77901

Wednesday, May 01, 2019, 4:00 p.m.

BakerRipley, Education Center

3838 Aberdeen Way, Houston, Texas 77025

Thursday, May 02, 2019, 10:30 a.m.

R.C. Miller Memorial Library

1605 Dowlen Road, Beaumont, Texas 77706

Anyone may submit comments on the draft AI in written form or oral testimony at the public hearings. In addition, written comments concerning the draft AI may be submitted by mail to the Texas Department of Housing and Community Affairs, Attn: Cate Tracz, P.O. Box 13941, Austin, Texas 78711-3941, by email to cate.tracz@tdhca.state.texas.us, or by fax to (512) 475-3935 anytime during the

comment period. Those making public comment are encouraged to reference the specific section of the AI related to their comment.

Individuals who require auxiliary aids or services at the public hearings should contact Ms. Cate Tracz, ADA responsible employee, at (512) 936-7803 or Relay Texas at (800) 735-2989 at least three days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters at the public hearing should contact Elena Peinado by phone at (512) 475-3814 or by email at elena.peinado@tdhca.state.texas.us at least three days before the meeting so that appropriate arrangements can be made.

Notificación de audiencias públicas y periodo de comentarios públicos sobre el borrador del análisis de impedimentos para la elección de vivienda justa del estado de Texas

El análisis de impedimentos (AI, por sus siglas en inglés) para la elección de vivienda justa es un proceso que los beneficiarios de los fondos de subvenciones para Desarrollo y Planeación Comunitarios del Departamento de Vivienda y Desarrollo Urbano de los Estados Unidos (CPD y HUD, por sus siglas en inglés, respectivamente) asumen como parte de su obligación respecto a la promoción afirmativa de vivienda justa (AFFH, por sus siglas en inglés), en conformidad con la Ley de Vivienda Justa.

A nivel estatal, el Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA, por sus siglas en inglés), el Departamento de Agricultura de Texas (TDA, por sus siglas en inglés), la Oficina General de Tierras de Texas (GLO, por sus siglas en inglés) y el Departamento Estatal de Servicios de Salud de Texas (DSHS, por sus siglas en inglés) son responsables de implementar el trabajo del AI debido a que estas agencias reciben y asignan los fondos para el Desarrollo y Planeación Comunitarios del HUD. El TDHCA encabezó el proceso de desarrollo del borrador del AI a nombre de otras agencias estatales de Texas que recibieron fondos para el CPD.

Se abrirá un periodo de participación pública del 25 de marzo al 6 de mayo de 2019 para obtener comentarios sobre el borrador del AI. Se realizarán 13 audiencias públicas durante dicho periodo, una en cada región de servicio del TDHCA. No se aceptarán los comentarios que se reciban después de las 5:00 p.m., hora local de Austin, del 6 de mayo de 2019. El borrador del AI puede consultarse en la página web de comentarios públicos del TDHCA en <http://www.tdhca.state.texas.us/public-comment.htm>.

El programa de audiencias públicas es el siguiente:

Miércoles 10 de abril de 2019 a las 10:30 a.m.

Centro de Voluntarios Haven for Hope

1 Haven for Hope Way, San Antonio, Texas, 78207

Jueves 11 de abril de 2019 a las 4:00 p.m. a las 5:30 p.m., o la conclusión del comentario público, lo que ocurra más tarde.

Salón del Concilio de la ciudad en el Ayuntamiento de Killeen

101 N. College Street Killeen, Texas 76541

Viernes 12 de abril de 2019 a las 10:00 a.m.

Departamento de Salud y Servicios Humanos de Texas, en Austin

909 West 45th Street, Room 164, Austin, Texas 78751

Lunes 15 de abril de 2019 a las 10:00 a.m.

Salón de Concilio de la ciudad de El Paso

300 N. Campbell, El Paso, Texas 79901

Martes 16 de abril de 2019 a las 9:30 a.m.

Centro MLK

2300 East Butternut Lane, Midland, Texas 79701

Martes 16 de abril de 2019 a las 4:30 p.m. a las 5:30 p.m., o la conclusión del comentario público, lo que ocurra más tarde.

Salón del Concilio de la ciudad de Lubbock

1625 13th Street, Lubbock, Texas 79401

Miércoles 17 de abril de 2019 a la 1:00 p.m.

Comisión de Planeación Regional Nortex

4309 Old Jacksboro Hwy, Suite 200, Wichita Falls, Texas 76302

Jueves 18 de abril de 2019 a las 10:30 a.m.

Salón Stone (7.º piso), Biblioteca Central J. Erik Jonsson, Dallas

1515 Young Street, Dallas, Texas 75201

Jueves 18 de abril de 2019 a las 4:00 p.m.

Centro de Convenciones y Actividades Maude Cobb

100 Grand Blvd, Longview, Texas 75604

Martes 30 de abril de 2019 a la 1:00 p.m.

Tribunal de Comisionados del Condado de Hidalgo

Anexo III del Edificio de Administración

100 East Cano Street, Edinburg, Texas 78539

Miércoles 1 de mayo de 2019 a las 9:30 a.m.

Salón del Concilio de la ciudad de Victoria

107 W. Juan Linn Street, Victoria, Texas 77901

Miércoles 1 de mayo de 2019 a las 4:00 p.m.

Centro de Educación BakerRipley

3838 Aberdeen Way, Houston, Texas 77025

Jueves 2 de mayo de 2019 a las 10:30 a.m.

Biblioteca R.C. Miller Memorial

1605 Dowlen Road, Beaumont, Texas 77706

Cualquier persona puede presentar comentarios sobre el borrador del AI a través de un testimonio escrito o verbal en las audiencias públicas. Adicionalmente, los comentarios escritos sobre el borrador del AI pueden enviarse por correo postal al Departamento de Vivienda y Asuntos Comunitarios de Texas de la siguiente forma: Texas Department of Housing and Community Affairs, Attn: Cate Tracz, P.O. Box 13941, Austin, Texas 78711-3941. También pueden dirigirse por correo electrónico a cate.tracz@tdhca.state.texas.us o por fax al (512) 475-3935 en cualquier momento durante el periodo de comentarios. Se recomienda a las personas que hagan comentarios públicos que mencionen la sección específica del AI relacionada con sus aportes.

Los individuos que requieran asistencia o servicios de adaptación en las audiencias públicas deben contactar a la señora Cate Tracz, empleada responsable de la Ley ADA, al (512) 936-7803 o al servicio de retransmisión de Texas al (800) 735-2989 por lo menos tres días antes de la reunión para que se puedan hacer las adaptaciones apropiadas.

Los individuos que no hablen inglés y que requieran de intérpretes en una audiencia pública, deben contactar a Elena Peinado por teléfono al (512) 475-3814 o por correo electrónico a elena.peinado@tdhca.state.texas.us por lo menos tres días antes de la reunión para que se puedan hacer las adaptaciones apropiadas.

TRD-201900916

David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

Filed: March 26, 2019

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application for Time Insurance Company, a foreign life, accident and/or health company, to change its name to Time Insurance Company II. The home office is in San Juan, Puerto Rico.

Application for Dearborn National Life Insurance Company, a foreign life, accident and/or health company, to change its name to Dearborn Life Insurance Company. The home office is in Chicago, Illinois.

Application for 21st Century National Insurance Company, a foreign fire and/or casualty company, to change its name to Plymouth Rock Assurance Preferred Corporation. The home office is in Garden City, New York.

Application for The Pyramid Life Insurance Company, a foreign life, accident and/or health company, to change its name to Nassau Life Insurance Company of Kansas. The home office is in Overland Park, Kansas.

Application to do business in the state of Texas for Evry Health Insurance Company of Texas, a domestic life, accident and/or health company. The home office is in Dallas, 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 Christian Hertzberg, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201900933

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: March 27, 2019

◆ ◆ ◆
Texas Lottery Commission

Scratch Ticket Game Number 2132 "Topaz 7s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2132 is "TOPAZ 7s". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2132 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2132.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,

22, 23, 24, 25, 26, 27, 28, 29, 30, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100 and \$777.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2132 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THR\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$

\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$777	TPPZ

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2132), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2132-0000001-001.

H. Pack - A Pack of "TOPAZ 7s" Scratch Ticket Game contains 150 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; Tickets 006 to 010 on the next page etc.; and Tickets 146 to 150 will be on the last page. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "TOPAZ 7s" Scratch Ticket Game No. 2132.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "TOPAZ 7s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 16 (sixteen) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 16 (sixteen) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly 16 (sixteen) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 16 (sixteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 16 (sixteen) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to five (5) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$100 and \$777 will each appear at least once.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Non-Winning Tickets will not contain more than two matching Prize Symbols.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 01 and \$1, 02 and \$2, 03 and \$3, 04 and \$4, 05 and \$5, 10 and \$10, 20 and \$20).

2.3 Procedure for Claiming Prizes.

A. To claim a "TOPAZ 7s" Scratch Ticket Game prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00 or \$100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TOPAZ 7s" Scratch Ticket Game prize of \$777 the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the

appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TOPAZ 7s" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "TOPAZ 7s" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "TOPAZ 7s" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner

specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "TOPAZ 7s" Scratch Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned

by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 16,560,000 Scratch Tickets in the Scratch Ticket Game No. 2132. The approximate number and value of prizes in the game are as follows:

Figure 2: TAC GAME NO. 2132 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	1,324,800	12.50
\$2	1,048,800	15.79
\$3	368,000	45.00
\$4	165,600	100.00
\$5	441,600	37.50
\$10	92,000	180.00
\$20	36,800	450.00
\$40	6,072	2,727.27
\$100	2,208	7,500.00
\$777	46	360,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.75. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2132 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket

Game No. 2132, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201900919
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: March 26, 2019



Scratch Ticket Game Number 2136 "Emerald 7s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2136 is "EMERALD 7s". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2136 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2136.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are:

CHERRY SYMBOL, GOLD BAR SYMBOL, BANANA SYMBOL, DICE SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, SPADE SYMBOL, PINEAPPLE SYMBOL, BELL SYMBOL, SUN SYMBOL, ANCHOR SYMBOL, APPLE SYMBOL, STACK OF BILLS SYMBOL, HORSESHOE SYMBOL, PEAR SYMBOL, LEMON SYMBOL, BOLT SYMBOL, STRAWBERRY SYMBOL, SAFE SYMBOL, STAR SYMBOL, COIN SYMBOL, CLUB SYMBOL, POT OF GOLD SYMBOL, 4 LEAF CLOVER SYMBOL, WISHBONE SYMBOL, 7 SYMBOL, 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 7 SYMBOL, 77 SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000 and \$177,777.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2136 - 1.2D

PLAY SYMBOL	CAPTION
CHERRY SYMBOL	CHERRY
GOLD BAR SYMBOL	BAR
BANANA SYMBOL	BANANA
DICE SYMBOL	DICE
CROWN SYMBOL	CROWN
DIAMOND SYMBOL	DIAMOND
SPADE SYMBOL	SPADE
PINEAPPLE SYMBOL	PNAPLE
BELL SYMBOL	BELL
SUN SYMBOL	SUN
ANCHOR SYMBOL	ANCHOR
APPLE SYMBOL	APPLE
STACK OF BILLS SYMBOL	BILLS
HORSESHOE SYMBOL	HRSHOE
PEAR SYMBOL	PEAR
LEMON SYMBOL	LEMON
BOLT SYMBOL	BOLT
STRAWBERRY SYMBOL	STRWBY
SAFE SYMBOL	SAFE
STAR SYMBOL	STAR
COIN SYMBOL	COIN
CLUB SYMBOL	CLUB
POT OF GOLD SYMBOL	GOLD
4 LEAF CLOVER SYMBOL	CLOVER
WISHBONE SYMBOL	WISHBN
7 SYMBOL	WINX2
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV

13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
7 SYMBOL	WIN
77 SYMBOL	WINX2
\$5.00	FIV\$
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$177,777	TPPZ

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2136), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2136-000001-001.

H. Pack - A Pack of "EMERALD 7s" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "EMERALD 7s" Scratch Ticket Game No. 2136.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "EMERALD 7s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 50 (fifty) Play Symbols. GAME 1: If a player reveals 3 matching Play Symbols in the same SPIN, the player wins the PRIZE for that SPIN. If the player reveals 2 matching Play Symbols and a "7" Play Symbol in the same SPIN, the player wins DOUBLE the PRIZE for that SPIN. GAME 2: If the player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "7" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "77" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 50 (fifty) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 50 (fifty) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 50 (fifty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 50 (fifty) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas

Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$177,777 will each appear at least once, except on Tickets winning sixteen (16) times.

D. GENERAL: A Ticket can win up to sixteen (16) times.

E. GENERAL: If a Ticket wins with a "7" (WINX2) Play Symbol in GAME 1, a single "7" (WIN) Play Symbol will not appear in GAME 2.

F. GAME 1: GAME 1 can win up to eight (8) times.

G. GAME 1: On all SPINS, non-winning Prize Symbols will all be different.

H. GAME 1: GAME 1 consists of eight (8) SPINS with three (3) Play Symbols and one (1) Prize Symbol per SPIN.

I. GAME 1: There will never be three (3) matching Play Symbols in a vertical or diagonal line.

J. GAME 1: On non-winning games, a Play Symbol will never appear more than two (2) times in a SPIN.

K. GAME 1: Consecutive non-winning GAME 1 Tickets within a Pack will not have matching SPINS. For example, if the first Ticket contains a Lemon Play Symbol, Banana Play Symbol and a Bell Play Symbol in any SPIN, then the next Ticket may not contain a Lemon Play Symbol, Banana Play Symbol and a Bell Play Symbol in any SPIN in any order.

L. GAME 1: Non-winning games will not have matching SPINS. For example, if SPIN 1 is a Lemon Play Symbol, Banana Play Symbol and a Bell Play Symbol, then SPIN 2 through SPIN 8 will not contain a Lemon Play Symbol, Banana Play Symbol and a Bell Play Symbol in any order.

M. GAME 1: Winning games will contain three (3) matching Play Symbols in a horizontal SPIN or two (2) matching Play Symbols and a "7" (WINX2) Play Symbol in a horizontal SPIN.

N. GAME 1: The "7" (WINX2) Play Symbol and two (2) matching Play Symbols in a SPIN will win DOUBLE the PRIZE for that SPIN and will win as per the prize structure.

O. GAME 1: The "7" (WINX2) Play Symbol will never appear on a non-winning game.

P. GAME 1: The "7" (WINX2) Play Symbol will never appear more than once in this game.

Q. GAME 2: GAME 2 can win up to eight (8) times.

R. GAME 2: No matching non-winning YOUR NUMBERS Play Symbols will appear in this game.

S. GAME 2: Non-winning Prize Symbols will not match a winning Prize Symbol in this game.

T. GAME 2: No matching WINNING NUMBERS Play Symbols will appear in this game.

U. GAME 2: YOUR NUMBERS Play Symbols will never equal the corresponding prize symbol (i.e., 05 and \$5, 10 and \$10, 15 and \$15, 20 and \$20).

V. GAME 2: A Prize Symbol will not appear more than two (2) times, except as required by the prize structure to create multiple wins.

W. GAME 2: On non-winning games, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

X. GAME 2: The "7" (WIN) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Y. GAME 2: The "7" (WIN) Play Symbol will win the PRIZE for that Play Symbol.

Z. GAME 2: The "7" (WIN) Play Symbol will never appear more than two (2) times on a game.

AA. GAME 2: The "7" (WIN) Play Symbol will never appear on a non-winning game.

BB. GAME 2: The "77" (WINX2) Play Symbol will never appear on a non-winning game.

CC. GAME 2: The "77" (WINX2) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

DD. GAME 2: The "77" (WINX2) Play Symbol will win DOUBLE the PRIZE for that Play Symbol and will win as per the prize structure.

EE. GAME 2: The "77" (WINX2) Play Symbol will never appear more than once.

2.3 Procedure for Claiming Prizes.

A. To claim a "EMERALD 7s" Scratch Ticket Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$200 or \$500 a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "EMERALD 7s" Scratch Ticket Game prize of \$1,000 or \$177,777, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "EMERALD 7s" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "EMERALD 7s" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "EMERALD 7s" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank

account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "EMERALD 7s" Scratch Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 10,440,000 Scratch Tickets in the Scratch Ticket Game No. 2136. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2136 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	1,136,800	9.18
\$10	904,800	11.54
\$15	278,400	37.50
\$20	69,600	150.00
\$25	104,400	100.00
\$50	104,400	100.00
\$100	36,888	283.02
\$200	2,523	4,137.93
\$500	1,624	6,428.57
\$1,000	160	65,250.00
\$177,777	5	2,088,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.96. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2136 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2136, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201900921
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: March 26, 2019



Scratch Ticket Game Number 2137 "Ruby 7s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2137 is "RUBY 7s". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2137 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2137.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: \$10.00, \$20.00, \$40.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000, \$277,777, CROWN SYMBOL, POT OF GOLD SYMBOL, MONEY CLIP SYMBOL, DIAMOND SYMBOL, TREASURE CHEST SYMBOL, STACK OF CASH SYMBOL, PIGGY BANK SYMBOL, SAFE SYMBOL, WALLET SYMBOL, 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 7 SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2137 - 1.2D

PLAY SYMBOL	CAPTION
\$10.00	TEN\$
\$20.00	TWY\$
\$40.00	FRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10 TH
\$277,777	TPPZ
CROWN SYMBOL	CROWN
POT OF GOLD SYMBOL	POTGLD
MONEY CLIP SYMBOL	CLIP
DIAMOND SYMBOL	DMND
TREASURE CHEST SYMBOL	CHEST
STACK OF CASH SYMBOL	CASH
PIGGY BANK SYMBOL	PGYBNK
SAFE SYMBOL	SAFE
WALLET SYMBOL	WALLET
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN

20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
7 SYMBOL	WINX3

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2137), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2137-000001-001.

H. Pack - A Pack of "RUBY 7s" Scratch Ticket Game contains 050 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "RUBY 7s" Scratch Ticket Game No. 2137.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "RUBY 7s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 57 (fifty-seven) Play Symbols. GAME 1: If a player reveals 3 matching prize amounts, the player wins that amount. GAME 2: If the player reveals 3 matching prize amounts, the player wins that amount. GAME 3: If the player reveals 3 matching Play Symbols, the player wins \$20. GAME 4: If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "7" Play Symbol, the player wins TRIPLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 57 (fifty-seven) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 57 (fifty-seven) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 57 (fifty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 57 (fifty-seven) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to twenty-one (21) times.

D. GAME 1: GAME 1 can win up to one (1) time.

E. GAME 1: Winning games will contain three (3) matching Prize Symbols.

F. GAME 1: A Prize Symbol will not appear more than three (3) times on any game.

G. GAME 1: On winning games, all non-winning Prize Symbols will be different from winning Prize Symbols.

H. GAME 1: A game will not contain two (2) sets of three (3) matching Prize Symbols.

I. GAME 1: Non-winning games will never have more than two (2) matching Prize Symbols.

J. GAME 2: GAME 2 can win up to one (1) time.

K. GAME 2: Winning games will contain three (3) matching Prize Symbols.

L. GAME 2: A Prize Symbol will not appear more than three (3) times on any game.

M. GAME 2: On winning games, all non-winning Prize Symbols will be different from winning Prize Symbols.

N. GAME 2: A game will not contain two (2) sets of three (3) matching Prize Symbols.

O. GAME 2: Non-winning games will never have more than two (2) matching Prize Symbols.

P. GAME 3: On non-winning games, there will never be more than two (2) matching Play Symbols.

Q. GAME 3: GAME 3 can win up to one (1) time.

R. GAME 3: Winning games will contain three (3) matching Play Symbols.

S. GAME 4: GAME 4 can win up to eighteen (18) times.

T. GAME 4: No matching non-winning YOUR NUMBERS Play Symbols will appear on a game.

U. GAME 4: Games winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

V. GAME 4: No matching WINNING NUMBERS Play Symbols will appear in this game.

W. GAME 4: YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 10 and \$10, 20 and \$20, 40 and \$40, 50 and \$50).

X. GAME 4: On winning and non-winning games, the top cash prizes of \$10,000 and \$277,777 will each appear at least once, except on games winning eighteen (18) times.

Y. GAME 4: On all games, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

Z. GAME 4: Non-winning Prize Symbols will not match a winning Prize Symbol in this game.

AA. GAME 4: On non-winning games, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

BB. GAME 4: The "7" (WINX3) Play Symbol will win TRIPLE the PRIZE for that Play Symbol and will win as per the prize structure.

CC. GAME 4: The "7" (WINX3) Play Symbol will never appear more than once on a Ticket.

DD. GAME 4: The "7" (WINX3) Play Symbol will never appear on a non-winning game.

EE. GAME 4: The "7" (WINX3) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "RUBY 7s" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00, \$40.00, \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "RUBY 7s" Scratch Ticket Game prize of \$1,000, \$10,000 or \$277,777, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "RUBY 7s" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "RUBY 7s" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "RUBY 7s" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights

to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "RUBY 7s" Scratch Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 8,040,000 Scratch Tickets in the Scratch Ticket Game No. 2137. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2137 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10	884,400	9.09
\$20	482,400	16.67
\$30	321,600	25.00
\$40	120,600	66.67
\$50	160,800	50.00
\$100	80,400	100.00
\$200	12,864	625.00
\$500	1,809	4,444.44
\$1,000	203	39,605.91
\$10,000	12	670,000.00
\$277,777	5	1,608,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.89. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2137 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2137, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201900920
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: March 26, 2019



Scratch Ticket Game Number 2138 "Diamond 7s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2138 is "DIAMOND 7s". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2138 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2138.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: SINGLE CHERRY SYMBOL, GOLD BAR SYMBOL, BANANA SYMBOL, DICE SYMBOL, DIAMOND SYMBOL, SPADE SYMBOL, PINEAPPLE SYMBOL, BELL SYMBOL, SUN SYMBOL, ANCHOR SYMBOL, APPLE SYMBOL, HORSESHOE SYMBOL, LIGHTNING BOLT SYMBOL, LEMON SYMBOL, HEART SYMBOL, STRAWBERRY SYMBOL, CLUB SYMBOL, POT OF GOLD SYMBOL, FOUR LEAF CLOVER SYMBOL, WISHBONE SYMBOL, 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 7 SYMBOL, 77

SYMBOL, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$200, \$500, \$1,000, \$10,000, \$100,000 and \$777,777.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2138 - 1.2D

PLAY SYMBOL	CAPTION
SINGLE CHERRY SYMBOL	CHERRY
GOLD BAR SYMBOL	BAR
BANANA SYMBOL	BANANA
DICE SYMBOL	DICE
DIAMOND SYMBOL	DIAMOND
SPADE SYMBOL	SPADE
PINEAPPLE SYMBOL	PNAPLE
BELL SYMBOL	BELL
SUN SYMBOL	SUN
ANCHOR SYMBOL	ANCHOR
APPLE SYMBOL	APPLE
HORSESHOE SYMBOL	HRSHOE
LIGHTNING BOLT SYMBOL	BOLT
LEMON SYMBOL	LEMON
HEART SYMBOL	HEART
STRAWBERRY SYMBOL	STRWBY
CLUB SYMBOL	CLUB
POT OF GOLD SYMBOL	GOLD
FOUR LEAR CLOVER SYMBOL	CLOVER
WISHBONE SYMBOL	WISHBN
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN

19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
7 SYMBOL	WIN
77 SYMBOL	WINX2
\$20.00	TWY\$
\$25.00	TWV\$
\$50.00	FFTY\$
\$75.00	SVV\$
\$100	ONHN
\$200	TOHN

\$500	FVHN
\$1,000	ONTH
\$10,000	10TH
\$100,000	100TH
\$777,777	TPPZ

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2138), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2138-0000001-001.

H. Pack - A Pack of "DIAMOND 7s" Scratch Ticket Game contains 025 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "DIAMOND 7s" Scratch Ticket Game No. 2138.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "DIAMOND 7s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 70 (seventy) Play Symbols. BONUS QUICK WIN PLAY AREAS: If a player reveals 2 matching Play Symbols in the same BONUS QUICK WIN play area, the player WINS \$500! MAIN PLAY AREA: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "7" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "77" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 70 (seventy) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly 70 (seventy) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 70 (seventy) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 70 (seventy) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-two (32) times.

D. GENERAL: On winning and Non-Winning Tickets, the top cash prizes of \$10,000, \$100,000 and \$777,777 will each appear at least once, except on Tickets winning thirty (30) times or more.

E. BONUS QUICK WIN PLAY AREAS: A Ticket can win up to one (1) time in each of the two (2) BONUS QUICK WIN play areas.

F. BONUS QUICK WIN PLAY AREAS: A BONUS QUICK WIN Play Symbol will not be used more than one (1) time per Ticket across both BONUS QUICK WIN play areas, unless used in a winning combination.

G. BONUS QUICK WIN PLAY AREAS: Winning combinations across both BONUS QUICK WIN play areas will be different.

H. MAIN PLAY AREA: No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

I. MAIN PLAY AREA: Games winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

J. MAIN PLAY AREA: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

K. MAIN PLAY AREA: No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

L. MAIN PLAY AREA: YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 20 and \$20, 25 and \$25, 50 and \$50).

M. MAIN PLAY AREA: On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

N. MAIN PLAY AREA: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

O. MAIN PLAY AREA: The "7" (WIN) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

P. MAIN PLAY AREA: The "7" (WIN) Play Symbol will win the PRIZE for that Play Symbol and will win as per the prize structure.

Q. MAIN PLAY AREA: The "7" (WIN) Play Symbol will never appear more than once on a Ticket.

R. MAIN PLAY AREA: The "7" (WIN) Play Symbol will never appear on a Non-Winning Ticket.

S. MAIN PLAY AREA: The "77" (WINX2) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

T. MAIN PLAY AREA: The "77" (WINX2) Play Symbol will win DOUBLE the PRIZE for that Play Symbol and will win as per the prize structure.

U. MAIN PLAY AREA: The "77" (WINX2) Play Symbol will never appear more than once on a Ticket.

V. MAIN PLAY AREA: The "77" (WINX2) Play Symbol will never appear on a Non-Winning Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "DIAMOND 7s" Scratch Ticket Game prize of \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$75.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DIAMOND 7s" Scratch Ticket Game prize of \$1,000, \$10,000, \$100,000 or \$777,777, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DIAMOND 7s" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the

event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "DIAMOND 7s" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "DIAMOND 7s" Scratch Ticket Game, the

Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "DIAMOND 7s" Scratch Ticket may be entered into one of five promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,080,000 Scratch Tickets in the Scratch Ticket Game No. 2138. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2138 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20	906,240	7.81
\$25	453,120	15.63
\$50	283,200	25.00
\$75	113,280	62.50
\$100	283,200	25.00
\$200	56,640	125.00
\$500	9,912	714.29
\$1,000	1,750	4,045.71
\$10,000	60	118,000.00
\$100,000	3	2,360,000.00
\$777,777	4	1,770,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.36. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2138 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2138, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201900930
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: March 27, 2019

North Central Texas Council of Governments

Notice of Contract Award - Development Environment and Web Interface for Transportation Geographical Information

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of contract award. The request appeared in the September 21, 2018, issue of the *Texas Register* (43 TexReg 6410). The selected entity will perform technical and professional work for Development Environment and Web Interface for Transportation Geographical Information project.

The entity selected for this project is CartoVista, 37 Saint-Joseph Boulevard, Gatineau, Quebec J8Y 3V8. The amount of the contract is not to exceed \$175,000.

Issued in Arlington, Texas on March 20, 2019.

TRD-201900885
 R. Michael Eastland
 Executive Director
 North Central Texas Council of Governments
 Filed: March 25, 2019

Notice of Contract Award - Regional Trail Connections to Rail Stations Preliminary Engineering Study

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of contract award. The request appeared in the August 3, 2018, issue of the *Texas Register* (43 TexReg 5115). The selected entity will perform technical and professional work for the Regional Trail Connections to Rail Stations Preliminary Engineering Study.

The entity selected for this project is Halff Associates, 1201 North Bowser Road, Richardson, Texas 75081. The amount of the contract is not to exceed \$606,250.

TRD-201900876

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: March 25, 2019

Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking proposals from qualified organizations with demonstrated competence, knowledge, qualifications, successful performance, and reasonable fees to implement a "Summer Earn and Learn" program to develop work opportunities for students with disabilities in coordination with the workforce development programs administered in the Panhandle Workforce Development Area (PWDA). The purpose of this solicitation is to enable PRPC to evaluate and select an entity capable of performing these services and to enter into negotiation for a contract at a fair and reasonable price.

Interested proposers may obtain a copy of the solicitation packet by contacting Leslie Hardin, at (806) 372-3381 / (800) 477-4562 or lhardin@theprpc.org. The packet may also be picked up at PRPC's offices located at 415 S.W. 8th Avenue in Amarillo, Texas 79101. The proposals must be submitted to PRPC no later than April 12, 2019.

PRPC as administrative and fiscal agent for the Panhandle Workforce Development Board dba Workforce Solutions Panhandle, a proud partner of the AmericanJobCenter Network, is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711

TRD-201900849

Leslie Hardin

WFD Contracts Coordinator

Panhandle Regional Planning Commission

Filed: March 21, 2019

Public Utility Commission of Texas

Request for Proposal - Technical Consulting Services

RFP Number **473-19-00004 (Project 49217)**

The Public Utility Commission of Texas (PUC) issues this request for proposals (RFP) to provide consulting services regarding American Electric Power Texas' (AEP Texas) securitization financing for recovery of system restoration costs incurred as a result of Hurricane Harvey. This RFP is issued pursuant to Texas Utilities Code, §§14.001, 36.401-36.403 and 39.301.

The issuance of securitized bonds involves highly specialized expertise and experience in capital market conditions and debt financing, and the proposed consulting contract will procure services that enable the Commission to fulfill the statutory requirement of PURA §39.301, which states that "the commission shall ensure that the structuring and pricing of the transition bonds result in the lowest transition bond charges consistent with market conditions and the terms of the financing order."

Scope of Work:

The PUC is issuing this request for proposals (RFP) for a contractor to serve as a consultant for the PUC to provide transparency into and evaluation of the securitization financing process followed by AEP Texas to ensure the PUC has a basis for allowing AEP Texas to go forward with the securitized financing as proposed or stopping the transaction.

The commission will use a best value method to determine the winning bid.

The commission has bid similar services in the past.

RFP documentation may be obtained by contacting:

Jay Stone

Public Utility Commission of Texas

RFPCorrespondence@puc.texas.gov

RFP documentation is also located on the PUC website at <http://www.puc.state.tx.us/agency/about/procurement/Default.aspx>.

Deadline for proposal submission is Monday, April 29, 2019 - 10:00 a.m., CT.

TRD-201900852

Andrea Gonzalez

Assistant Rules Coordinator

Public Utility Commission of Texas

Filed: March 22, 2019

Texas Department of Transportation

Aviation Division - Request for Qualifications (RFQ) for Professional Engineering Services

Jackson County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional engineering firm for 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: Jackson County; TxDOT CSJ No.: 1913EDDNA.

The TxDOT Project Manager is Robert Johnson, P.E.

Scope: Provide engineering and design services, including construction administration, to:

Rehabilitate and mark Runway 15-33; and

Rehabilitate and mark parallel taxiway and connector taxiways.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is 14%. The goal will be re-set for the construction phase.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Jackson County Airport may include replacing the Medium Intensity Runway Edge Lights.

Jackson County 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, project diagram, and most recent Airport Layout Plan are available online at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm> by selecting "Jackson County 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.

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 30, 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 Bobby Hidrogo, Grant Manager. For technical questions, please contact Robert Johnson P.E., 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-201900847

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 20, 2019



Aviation Division - Request for Qualifications (RFQ) for Professional Engineering Services

Cherokee County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional engineering firm for 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.

This notice supersedes the previous notice regarding this project, which was published in the March 29, 2019, edition.

Current Project: Cherokee County; TxDOT CSJ No.: 1910JACKS. The TxDOT Project Manager is Paul Slusser.

Scope: Provide engineering and design services, including construction administration, to:

1. Relocate, reconstruct and mark north parallel taxiway;
2. Reconfigure apron for taxiway tie-in; and
3. Evaluate in the Preliminary Engineering Report a connector taxiway from north parallel taxiway to north hangar area.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is 20%. The goal will be re-set for the construction phase.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at Cherokee County Airport may include the following: relocate, reconstruct, and mark south parallel taxiway; reconfigure apron for south taxiway tie-in; and construct connector taxiway from north parallel taxiway to north hangar area.

Cherokee County 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, project diagram, and most recent Airport Layout Plan are available online at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm>

by selecting "Cherokee County 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.

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, 1 (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 26, 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 1(800) 68-PILOT (74568). For procedural questions, please contact Anna Ramirez. For technical questions, please contact Paul Slusser, 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-201900934
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 27, 2019



Notice of Public Hearing - Non-Radioactive Hazardous Materials Route Designation for the City of Paris, Texas

In accordance with Title 43, Texas Administrative Code, §25.103, the Texas Department of Transportation (TxDOT) will hold a public hearing to receive comments on a proposal received from the City of Paris to establish a Non-Radioactive Hazardous Materials (NRHM) route in Paris, Texas.

Proposed Route Description: The route designation would require that all vehicles carrying non-radioactive hazardous cargo travel through the City of Paris, Texas, via State Loop 286 to their intended point of exit, rather than travel on local streets or state business routes through the center of town.

The public hearing will be held at **10:00 a.m. on May 7, 2019** at:

Texas Department of Transportation, Riverside Campus
200 E. Riverside Drive
Training Room A
Austin, Texas 78704

The purpose of the public hearing is to receive comments and concerns of all affected persons and entities with regards to the designation of a Non-Radioactive Hazardous Cargo Route. The primary objective of designating a Hazardous Cargo Route is to minimize the potential for incidents and risk of harm to the public, should a truck/vehicle carrying hazardous materials be involved in an incident and the material be released. The designation of a Non-Radioactive Hazardous Materials Route will not remove or prohibit all truck/vehicles carrying hazardous materials from Lamar County roadways.

All interested persons are invited to attend this public hearing and to express their views. Those desiring to make official comments may register at the hearing location starting at 9:30 a.m. on the day of the hearing. Oral and written comments may be presented at the public hearing, or written comments may be submitted during the 45-day comment period that begins with this notice. Written comments may be submitted by mail to **Susan Howard, TxDOT Transportation Planning and Programming Division, Public Involvement Section, 200 E. Riverside Dr., Austin, TX 78704**. In order to be considered, written comments must be received at the Transportation Planning and Programming office by **5:00 p.m. on Wednesday, May 22, 2019**.

The hearing will be conducted in English. Persons requiring special communication or accommodation needs, including the need for a language interpreter, should contact TxDOT at (512) 416-2030 at least five (5) working days prior to the public hearing. Every reasonable effort to accommodate these requests will be made.

TRD-201900848
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 20, 2019



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html

Or visit www.txdot.gov, and under How Do I, choose Find Hearings and Meetings, then choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or (800) 68-PI-LOT.

TRD-201900846

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 20, 2019

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Texas Water Development Board

Applications for January 2019

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73835, a request from Nacogdoches County Municipal Utility District No. 1, 158 County Road 5026, Nacogdoches, Texas 75964-8739, received on January 10, 2019, for \$1,010,000 in financial assistance, from the Clean Water State Revolving Fund for relocation of the force main and replace the existing sanitary sewer lift station.

Project ID #73836, a request from the City of Laredo, 5816 Daugherty, Laredo, Texas 78041, received January 15, 2019, for \$52,000,000 in financial assistance, from the Clean Water State Revolving Fund for construction of the 4.75 MGD Manadas Creek WWTP in Northwest Laredo will provide service to the Mines Road and Northeast areas as well as relieve the overloaded conditions of the existing 24" wastewater line on Mines Road and the 36" wastewater line on IH35.

Project ID #21524, a request from Fort Bend County Fresh Water Supply District No. 1, P.O. Box 739, Fresnos, Texas 77545, received on January 7, 2019, for \$1,745,000 in financial assistance, from the Texas Water Development Board Fund for construction of new water treatment plant.

Project ID #73837, a request from the City of Horseshoe Bay, 1 Community Drive, Horseshoe Bay, Texas 78657-7765, received on January 25, 2019, for \$6,000,000 in financing from the Clean Water State Revolving Fund for wastewater treatment plant expansion project.

Project ID #73838, a request from the City of Woodloch, 2620 North Woodloch Street, Conroe, Texas 77385-8580, received on January 30,

2019, for \$1,959,000 in financing from the Clean Water State Revolving Fund for Planning, design, and construction of a new wastewater treatment plant.

TRD-201900922

Todd Chenoweth

General Counsel

Texas Water Development Board

Filed: March 26, 2019

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Applications for February 2019

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73839, a request from Roman Forest Consolidated Municipal Utility District, 611 Magnolia Bend, New Caney, Texas 77357-3282, received on February 1, 2019, for \$6,500,000 in financial assistance, from the Clean Water State Revolving Fund for disaster recovery for planning, design, acquisition, and construction of a new wastewater treatment plant.

Project ID #62848, a request from the City of Athens, 508 East Tyler Street, Athens, Texas 75751, received on February 7, 2019, for \$1,125,862 in financial assistance, from the Drinking Water State Revolving Fund to replace 6" cast-iron water main along portions of South Prairieville Street, Park Drive, E. Clinton Avenue and South Palestine Street.

Project ID #62849, a request from the City of Everman, 212 North Race Street, Everman, Texas 76140-3213, received on February 21, 2019, for \$2,839,800 in financial assistance, from the Drinking Water State Revolving Fund for removal and replacement of existing water main projects.

Project ID #62850, a request from the City of Willow Park, 516 Ranch House Road, Willow Park, Texas 76087, received on February 26, 2019, for \$13,393,000 in financing from the Drinking Water State Revolving Fund for wholesale drinking water from City of Fort Worth.

Project ID #62851, a request from the Jefferson County Water Control Improvement District No. 10, 3707 Central Boulevard, Nederland, Texas 77627, received on February 26, 2019, for \$498,410 in financing from the Drinking Water State Revolving Fund for replacement of water treatment plant control and lab project.

TRD-201900923

Todd Chenoweth

General Counsel

Texas Water Development Board

Filed: March 26, 2019

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

SALES AND CUSTOMER SUPPORT

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Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: customer.support@lexisnexis.com

Website: www.lexisnexis.com/printedsc



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