# TEXAS REGISTER

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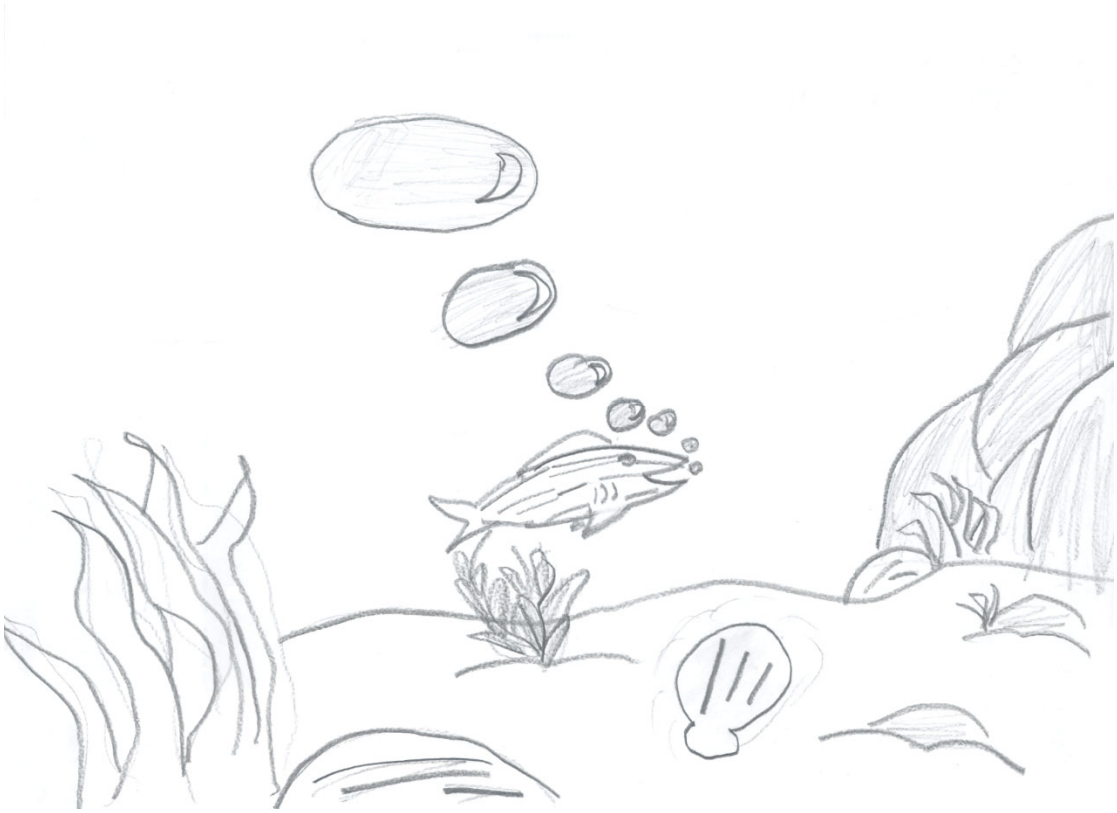

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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# In This Issue

THE GOVERNOR

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

Proclamation 41-3627

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, Greg Abbott, Governor of Texas, do hereby disapprove of and veto Senate Bill No. 1804 as passed by the Eighty-Sixth Texas Legislature, Regular Session, because of the following objections:

Senate Bill 1804 was a laudable effort to address domestic violence, until someone slipped in an ill-considered giveaway to a radioactive waste disposal facility. Unfortunately, the bill author's good idea about domestic violence has been dragged down by a bad idea about radioactive waste.

Since the Eighty-Sixth Texas Legislature, Regular Session, by its adjournment has prevented the return of this bill, I am filing these objections in the office of the Secretary of State and giving notice thereof by this public proclamation according to the aforementioned constitutional provision.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 5th day of June, 2019.

Greg Abbott, Governor

TRD-201901706

♦ ♦ ♦

Proclamation 41-3628

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28 and September 14 to add the following counties to the disaster proclamation: Angelina, Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington and Willacy; and

WHEREAS, on September 20, 2017, and in each subsequent month effective through today, I issued proclamations renewing the disaster declaration for all counties listed above; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 60 counties listed above.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

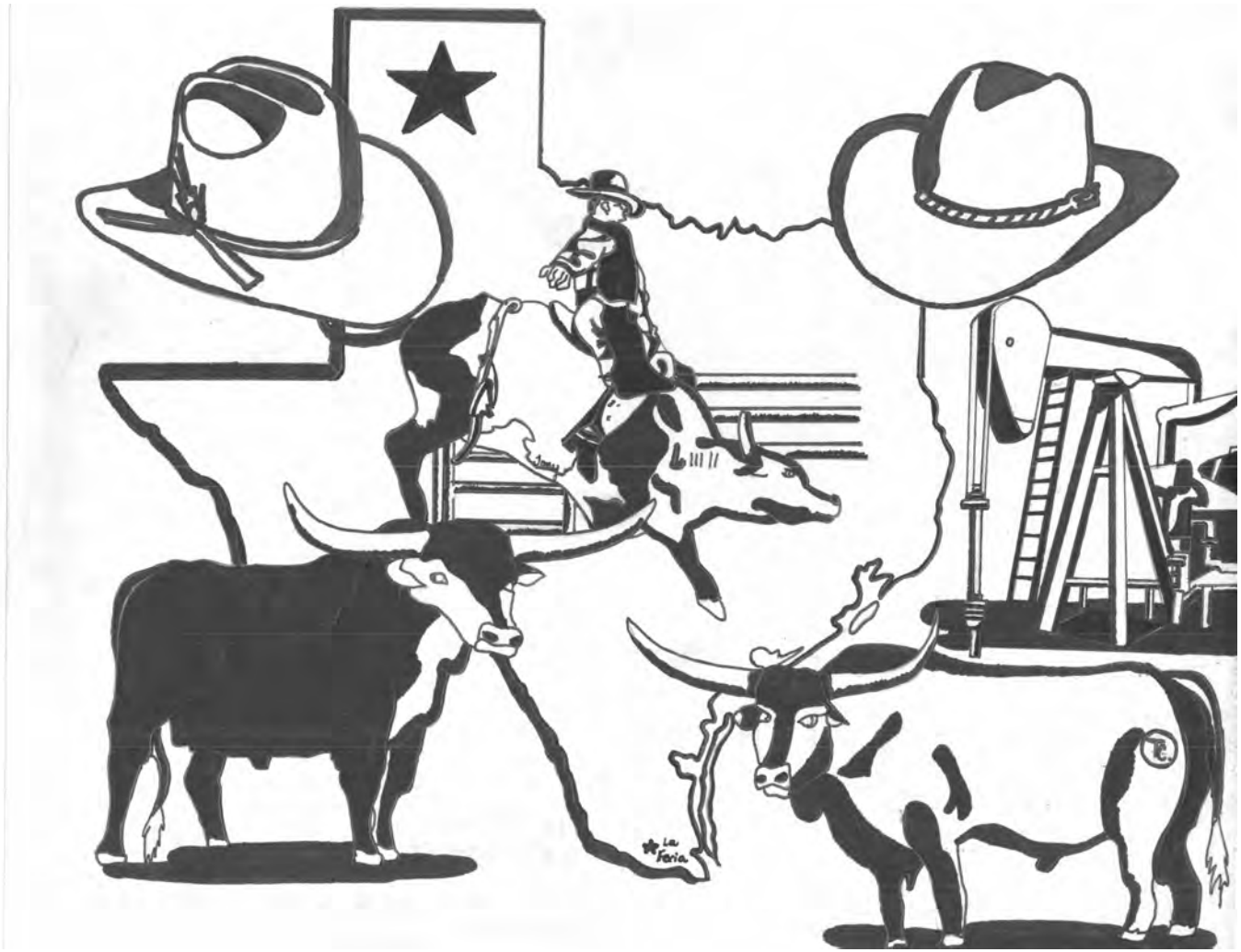
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 6th day of June, 2019.

Greg Abbott, Governor

TRD-201901707

♦ ♦ ♦


La Feria

# 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-0290-KP**

**Requestor:**

Ms. Terri Sellars

Wood County Auditor

P.O. Box 389

Quitman, Texas 75783-0389

Re: Payment of a district attorney *pro tem* (RQ-0290-KP)

**Briefs requested by July 8, 2019**

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

TRD-201901746
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: June 11, 2019

♦ ♦ ♦

## Opinions

**Opinion No. KP-0255**

Mr. Mark Wolfe

Executive Director

Texas Historical Commission

Post Office Box 12276

Austin, Texas 78711-2276

Re: Authority of the Historical Commission to permit the destructive testing of human remains for research purposes, including for the purpose of obtaining DNA samples adequate to enable the identification of genetically related descendants (RQ-0259-KP)

**S U M M A R Y**

A court would likely conclude that the Historical Commission is authorized to permit the destructive testing of human remains for research purposes, including the purpose of obtaining DNA samples adequate to enable the identification of genetically related descendants pursuant to the Commission's authority in Government Code chapter 442, Natural Resources Code chapter 191, and Health and Safety Code chapter 711.

**Opinion No. KP-0256**

The Honorable B. D. Griffin

Montgomery County Attorney

501 North Thompson, Suite 300

Conroe, Texas 77301

Re: Use of funds collected from claims on subdivision road and drainage bonds required under Local Government Code subsection 232.003(7) (RQ-0260-KP)

**S U M M A R Y**

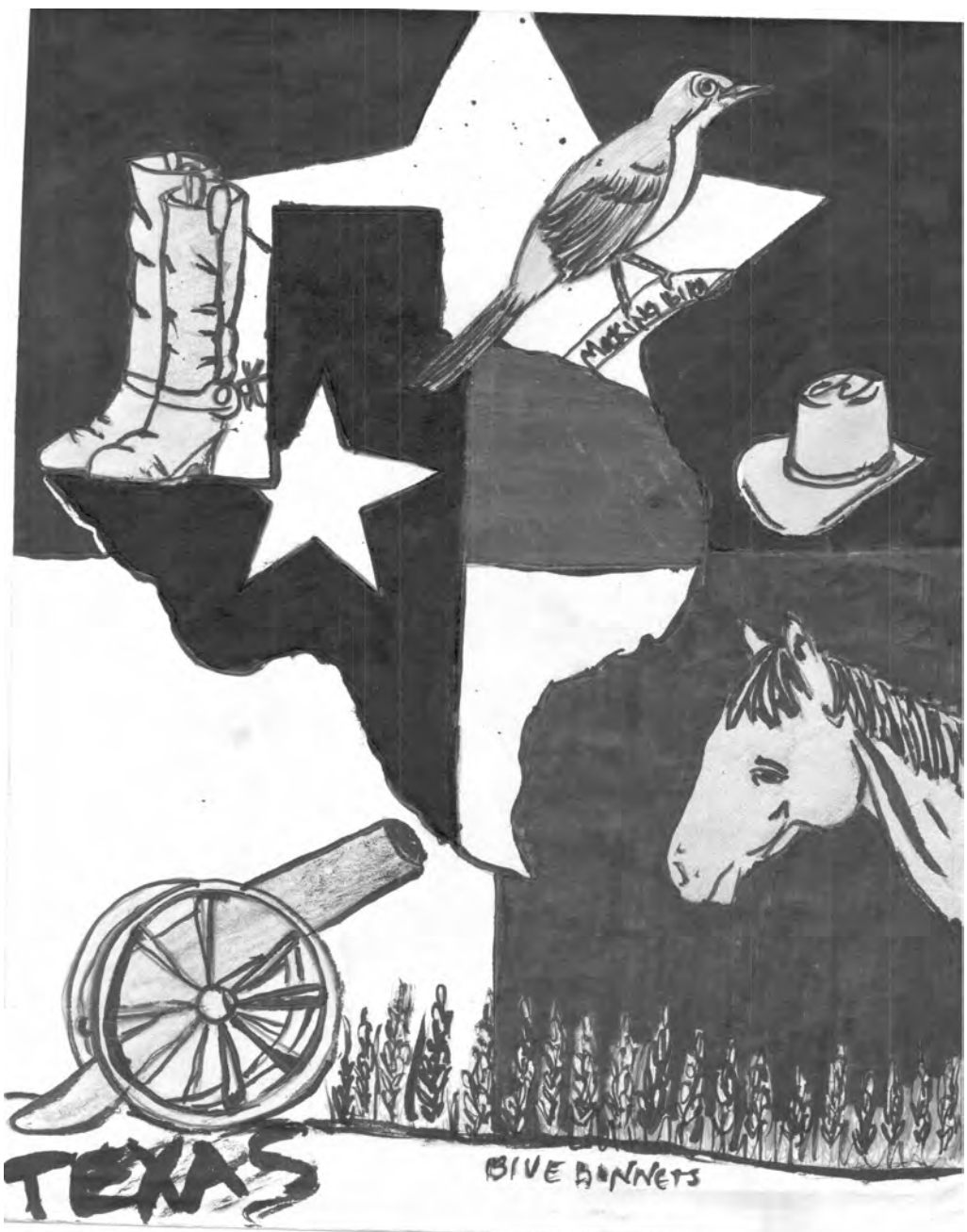
Sections 232.003, 232.0031, and 232.004 of the Local Government Code authorize a county to use proceeds from a subdivision bond required by section 232.003 to ensure a public or private road is constructed to standards adopted by the county for subdivision roads. A court would likely conclude that a county's expenditure of such bond proceeds, without more, does not constitute acceptance of the roads into the county's system of roads or otherwise obligate the county to maintain the roads.

A county may expend construction bond proceeds on subdivision drainage facilities that are not part of a road right-of-way, provided that the facilities are for stormwater runoff management or storm drainage coordination as authorized under Local Government Code subsection 232.003(8).

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

TRD-201901745
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: June 11, 2019

♦ ♦ ♦


TEXAS
BLUEBONNETS

# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Texas Ethics Commission

Advisory Opinion Request - Self Proposed

Regarding the reporting of certain expenditures made for the placement of Internet political advertising. **(SP-17)**

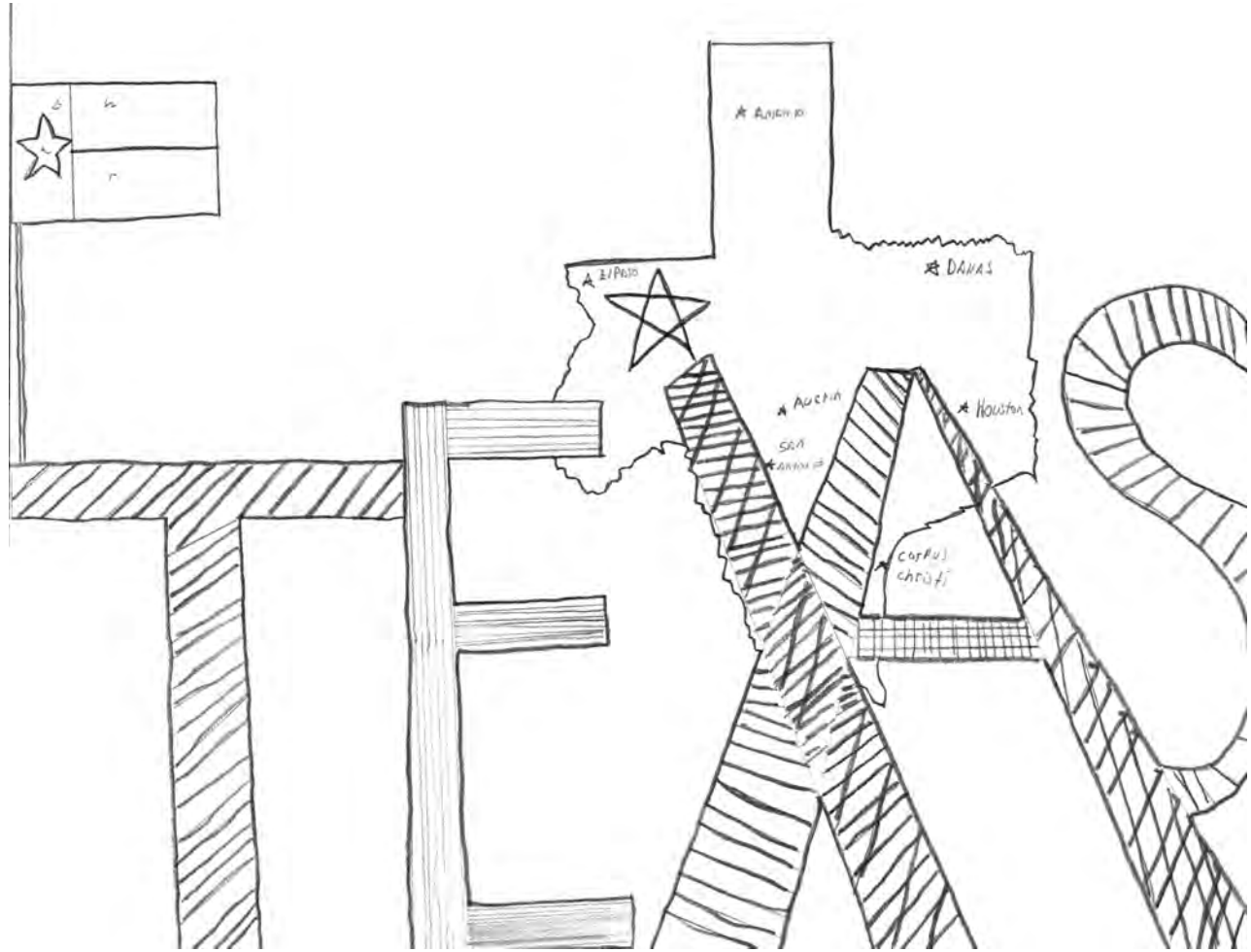
The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004,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

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

Issued in Austin, Texas, on June 12, 2019.

TRD-201901747
Ian Steusloff
Interim Executive Director/General Counsel
Texas Ethics Commission
Filed: June 11, 2019

♦ ♦ ♦


DALLAS
AUSTIN
Houston

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

# TITLE 4. AGRICULTURE

## PART 1. TEXAS DEPARTMENT OF AGRICULTURE

### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS
### SUBCHAPTER X. CITRUS GREENING QUARANTINE

**4 TAC §19.616**

The Texas Department of Agriculture (the Department) repeals Title 4, Part 1, Chapter 19, Subchapter X, §19.616, and adopts new §19.616 on an emergency basis. The Department takes this action to update the quarantined areas under threat of citrus greening disease to include Kenedy, Kleberg, and Webb counties. The emergency action is necessary in order to prevent devastation to local residential citrus and commercial citrus in the Texas Citrus Zone, through the spread of citrus greening as a result of infestations found in the counties. The emergency action is taken to expand the quarantine area, as required under the directive of United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine program (USDA-APHIS-PPQ).

On August 14, 2018, leaf samples were collected from a sour orange tree, *Citrus aurantium,* at a residence in Sarita, Kenedy County, Texas. The sample was confirmed positive for *Candidatus* Liberibacter *asiaticus* (CLas), the causal agent for citrus greening disease, on August 15, 2018, by the USDA-APHIS-PPQ Center for Plant Health Science & Technology (CPHST). On November 30, 2018, leaf samples were collected from a grapefruit tree, *Citrus paradisi,* at a residence in Laredo, Webb County, Texas. The sample was confirmed positive for *Candidatus* Liberibacter *asiaticus* (CLas), the causal agent for citrus greening disease, on December 14, 2018, by the USDA-APHIS-PPQ-CPHST. On February 25, 2019, leaf samples were collected from a lemon tree, *Citrus limon,* at a residence in Ricardo, Kleberg County, Texas. The sample was confirmed positive for *Candidatus* Liberibacter *asiaticus* (CLas), the causal agent for citrus greening disease, on February 28, 2019, by the USDA-APHIS-PPQ-CPHST.

The Department takes this emergency action to reduce the risk of spreading citrus greening to commercial citrus groves, citrus plant production nurseries, and residential citrus in non-infected areas of Texas and other states. The Department has determined that without the adoption of the emergency rule to expand the quarantined area, the citrus industry is threatened by the spread of citrus greening. The emergency rule is necessary to protect vital citrus fruit and nursery production, as well as residential citrus in Texas and other citrus producing states, by combatting the spread of citrus greening. Residents and visitors of the quarantined area should be aware of the disease and may help combat it by contacting the Department, Texas A&M University AgriLife Extension, Texas A&M University-Kingsville Citrus Center, USDA, or the Texas Citrus Pest and Disease Management Corporation for more information.

The adoption is made on an emergency basis pursuant to Texas Agriculture Code, §71.004, which authorizes the Department to establish emergency quarantines; §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and §12.020, which authorizes the Department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code.

The code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 71.

*§19.616. Infested Geographical Areas Subject to the Quarantine.*

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

Filed with the Office of the Secretary of State on June 5, 2019.

TRD-201901700
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: June 5, 2019
Expiration date: October 2, 2019
For further information, please call: (512) 463-4075

♦ ♦ ♦

**4 TAC §19.616**

The adoption is made on an emergency basis pursuant to Texas Agriculture Code, §71.004, which authorizes the Department to establish emergency quarantines; §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and §12.020, which authorizes the Department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code.

The code affected by the adoption is the Texas Agriculture Code, Chapters 12 and 71.

*§19.616. Quarantined Areas.*

(a) Quarantined areas.

(1) Quarantined areas are locations within this state in which the dangerous plant disease is currently found, from which dissemination of the disease is to be prevented, and within which the disease is to be managed or eradicated.

(2) Quarantined areas include:

(A) Coastal Bend Quarantined Area: Kleberg County;

(C) Valley Quarantined Area: Hidalgo and Kenedy Counties; and

(D) Webb County.

(b) A map of currently quarantined areas is available on the Department's website at TexasAgriculture.gov.

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

Filed with the Office of the Secretary of State on June 5, 2019.

TRD-201901701
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: June 5, 2019
Expiration date: October 2, 2019
For further information, please call: (512) 463-4075

♦ ♦ ♦

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

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

# TITLE 1. ADMINISTRATION

## PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

### CHAPTER 155. RULES OF PROCEDURE

### SUBCHAPTER C. FILING AND SERVICE OF DOCUMENTS

**1 TAC §155.101, §155.105**

Preamble to Proposed Rules

The State Office of Administrative Hearings (SOAH) proposes amendments to §155.101 and §155.105 of Texas Administrative Code, Title 1, Part 7, Chapter 155, Rules of Procedure, Subchapter C, concerning Filing and Service of Documents.

Explanation of Proposed Rules

The Texas Supreme Court mandated the implementation of electronic filing (e-filing) for all civil cases starting in 2012 and continuing through 2016. According to a 2016 report by the Legislative Budget Board, the benefits cited from the mandated use of e-filing include quicker court access to electronic documents, reduced storage costs for court clerks, and reduced printing and mailing costs for attorneys and litigants. Today, nearly all civil and criminal courts in the Texas judicial system have implemented the use of e-filing services available through the Office of Court Administration (OCA).

SOAH was created to serve as an independent forum for the conduct of adjudicative hearings in contested cases under Chapter 2001 of the Texas Government Code. Although SOAH is an executive branch agency, SOAH and its administrative law judges serve an adjudicatory function, and practice at SOAH conforms to many of the same rules of procedure common to the judiciary. Although SOAH is not required to adopt the Supreme Court's e-filing mandate, Texas Government Code, §2003.055 imposes a statutory obligation on SOAH to promote the effective use of technology in performing its functions. SOAH further recognizes the inherent efficiencies and cost-savings to be gained through the adoption of the state's approved e-filing technology.

The purpose of the proposed rule amendments is to modify procedural requirements for the filing and service of documents in administrative proceedings at SOAH in order to facilitate the planned implementation of OCA's e-filing technology. Once e-filing is fully-implemented at SOAH, the filing and service of pleadings and other documents for administrative proceedings will generally conform to e-filing practices used by the judicial court system. SOAH's current plan is to implement e-filing by August 2019. The proposed rule amendments affect only §155.101 and §155.105 of SOAH's Rules of Procedure.

The proposed amendments to §155.101 regarding filing documents at SOAH will replace specific references to SOAH's "Case Information System" or "CIS" with general references to the use of electronic filing. The amendments also provide that SOAH may require parties to electronically file documents through the electronic filing manager established by the OCA in accordance with applicable technology standards. Other amendments to §155.101 include changes necessary to conform SOAH's filing rule with Rule 21 of the Texas Rules of Civil Procedure (TRCP) regarding the time of filing, and the procedure for addressing technological failures of the e-filing system. Filing procedures for unrepresented parties who are unable to electronically file documents are amended only to clarify certain aspects of the current procedure. No changes are proposed at this time to the current filing requirements associated with cases referred by the Public Utility Commission and the Texas Commission on Environmental Quality.

The proposed amendments to §155.105 regarding the service of documents filed at SOAH will incorporate by reference the methods of service authorized by Rule 21a of the TRCP. Once e-filing is implemented at SOAH, parties will serve electronically filed documents through OCA's electronic filing manager in compliance with TRCP Rule 21a(a)(1). Other amendments are proposed to update references to the authorized methods of service with respect to the presumed time of receipt of service. Lastly, §155.105(c) regarding email service of SOAH-issued documents is amended to provide that once e-filing is implemented, SOAH may discontinue the use of its current email service and replace that service with the use of the e-filing system.

The proposed amendments to SOAH's procedures regarding filing and service are generally consistent with Rules 21 and 21a of the Texas Rules of Civil Procedure. No other rules are proposed under the Chapter at this time.

Fiscal Note

Public Benefit. Kristofer S. Monson, Chief Administrative Law Judge for SOAH, has determined for the first five-year period the proposed rule is in effect, there will be a benefit to the general public, state agencies, attorneys, and parties appearing at SOAH because the proposed rule will provide improved access to documents filed at SOAH, reduce costs associated with service of process, and reduce overall costs for storage, printing, and mailing of documents required for administrative hearings.

Probable Economic Costs. Chief Judge Monson, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of the proposed rules regarding the filing and service of documents in SOAH proceedings. Although some state agencies could incur transactional costs of obtaining access to

an e-filing service provider approved by the OCA, OCA's website at https://www.efiletexas.gov/service-providers.htm provides access to multiple service providers who offer e-filing services at no cost. Any costs are also anticipated to be off-set by cost-savings and efficiencies associated with the use of e-filing. Additionally, Chief Judge Monson has determined that the proposed rule does not have foreseeable implications relating to the costs or revenues of state or local government, as no fees would be charged by SOAH for the use of e-filing.

Fiscal Impact on Small Businesses, Micro-Businesses, and Rural Communities. There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Because the agency has determined that the proposed rule will have no adverse economic effects on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and Regulatory Analysis, as provided in Government Code §2006.002, is not required.

Local Employment Impact Statement. Chief Judge Monson has determined that the proposed rule 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. Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For the first five years the proposed rule will be in effect, the agency 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 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 expand, limit, or repeal existing regulations.

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

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

Takings Impact Assessment. Chief Judge Monson has determined that the proposed rule will not affect private real property interests; therefore, SOAH is not required to prepare a takings impact assessment under Government Code §2007.043.

Submission of Comments

Written comments on the proposed rules may be submitted to Angela Pardo, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025 or by email to: SOAHPI@soah.texas.gov with the subject line "E-Filing Rules." The deadline for receipt of comments is 5:00 p.m. on July 22, 2019. All requests for a public hearing on the proposed rules, submitted under the Administrative Procedure Act, must be received by the State Office of Administrative Hearings no more than fifteen (15) days after the notice of proposed rules have been published in the *Texas Register.*

Statutory Authority

The rules are proposed under: (i) Texas Government Code, §2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Government Code, §2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions; and (iii) Texas Government Code, §2001.004, which requires the adoption of rules of practice setting forth the nature and requirements of formal and informal procedures under the Administrative Procedures Act.

Cross Reference to Statute

The proposed new rule affects Chapters 2001 and 2003 of the Texas Government Code.

*§155.101. Filing Documents.*

(a) Filing and service required.

(1) All pleadings and other documents, except for confidential materials (as described in §155.103 of this title), shall be filed using one of the methods described in this rule.

(2) On the same date a document is filed, it shall also be served on all other parties as [~~using one of the methods~~] described in §155.105 of this title.

(b) Method and format of filing in all cases other than PUC, TCEQ, or IDEA cases.

(1) [~~Filing by~~] Electronic Filing [~~Case Information System~~].

(A) Except as otherwise provided in this subchapter, attorneys, state agencies, and other governmental entities are required to file all documents electronically in the manner specified on SOAH's website, [~~in SOAH's electronic Case Information System (CIS). CIS may be accessed and filings uploaded using SOAH's internet home page,~~] www.soah.texas.gov. SOAH may require parties to electronically file documents through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration. Parties not represented by an attorney are strongly encouraged to electronically file documents [~~use CIS~~] but may use alternative methods of filing described in paragraph (2) of this subsection.

(B) The electronic version of a document that has been electronically filed at SOAH [~~maintained in CIS~~] shall be given the same legal status as the originally filed document, without regard to the original means of filing.

(C) In addition to the other requirements of this rule, electronic filings [~~in CIS~~] must comply with all requirements and procedures set forth on SOAH's website and electronic filing page.

(D) Formatting. A pleading or other document filed electronically [~~in CIS~~] must:

*(i)* be in text-searchable portable document format (PDF);

*(ii)* be directly converted to PDF rather than scanned;

*(iii)* not be locked;

*(iv)* include the email address of a party, attorney, or representative of a state agency who electronically files a document; and

*(v)* include the SOAH docket number and the name of the case in which it is filed.

(E) Formatting. Other documents filed electronically [~~in CIS~~], such as attachments to pleadings, exhibits, affidavits, letters, and appendices, must:

*(i)* be in PDF format and, if possible, be text-searchable;

*(ii)* be directly converted to PDF rather than scanned, if possible;

*(iii)* not be locked;

*(iv)* comply with the applicable technology standards of the Judicial Committee on Information Technology if filed through the electronic filing manager established by the Office of Court Administration [~~if scanned, be at least 300 dots per inch (dpi) resolution~~];

*(v)* if not attached to a pleading or document that already contains this information, include the email address of a party, attorney, or representative of a state agency who electronically files a document; and

*(vi)* if not attached to a pleading or document that already contains this information, include the SOAH docket number and the name of the case in which it is filed.

(F) A pleading or document that is filed electronically [~~in CIS~~] is considered signed if the document includes:

*(i)* an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

*(ii)* an electronic image or scanned image of the signature.

(G) Time of filing. The time and date of documents filed electronically shall be determined in accordance with TRCP Rule 21 [~~by the time and date of receipt recorded by CIS~~].

(H) If deemed necessary by SOAH, alternative means of filing or maintaining documents may be established, including the filing and maintenance of the official file in a paper format.

(I) Testimony and exhibits offered at a hearing will not be filed electronically [~~in CIS~~]. Confidential material filed or submitted pursuant to §155.103 of this title will not be publicly available [~~in CIS~~].

(2) Filings by unrepresented parties [~~Non-CIS filings~~].

(A) For unrepresented parties who cannot file documents electronically as described in paragraph (1) of this subsection [~~do not use CIS~~], documents may be filed with SOAH:

*(i)* by mail addressed to SOAH at P.O. Box 13025, Austin, Texas 78711-3025;

*(ii)* by hand-delivery to SOAH at 300 West 15th Street, Room 504;

*(iii)* by fax to SOAH at (512) 322-2061; or

*(iv)* at the SOAH field office where the case is assigned, using the field office address or fax number, which are available at SOAH's website.

(B) All documents must include the SOAH docket number and the name of the case in which it is filed.

(C) Time of filing. With respect to documents filed by mail, fax, or hand-delivery, the time and date of filing shall be determined by the file stamp affixed by SOAH. Documents received after 5:00 p.m. or when SOAH is closed shall be deemed filed the next business day SOAH is open.

(3) Non-conforming documents. SOAH's docketing department may not refuse to file a document that fails to conform with this rule. When a filed document fails to conform to this rule, the presiding judge or SOAH's docketing department may identify the errors to be corrected and state a deadline for the person, attorney, or agency to resubmit the document in conforming format.

(4) Technical failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the presiding judge. If the missed deadline is one imposed by SOAH's electronic filing rules, the filing party must be given a reasonable extension of time to complete the filing.

(c) Method of filing in cases referred by the PUC.

(1) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed at the PUC in accordance with the PUC rules.

(2) The party filing a document with the PUC (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with a copy of the document by delivery to SOAH on the same day as the filing.

(3) The court reporter shall provide the transcript and exhibits to the judge at the same time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the PUC by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the PUC by the judge.

(d) Methods of filing in cases referred by the TCEQ.

(1) Except for exhibits offered at a prehearing conference or hearing, the original of all documents shall be filed with the TCEQ's chief clerk in accordance with the TCEQ rules.

(2) The time and date of filing of these materials shall be determined by the file stamp affixed by the chief clerk, or as evidenced by the file stamp affixed to the document or envelope by the TCEQ mail room, whichever is earlier.

(3) The party filing a document with the TCEQ (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve the judge with a copy of the document by delivery to SOAH on the same day as the filing.

(4) The court reporter shall provide the transcript and exhibits to the judge at the time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the TCEQ by the judge. If no court reporter was requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the TCEQ by the judge.

*§155.105. Service of Documents on Parties.*

(a) Method of service by parties in all cases other than those referred by PUC or TCEQ.

(1) Service on all parties. On the same date a document is filed, a copy shall also be sent to each party or the party's authorized representative using the method of service specified by TRCP Rule 21a

[~~by hand-delivery; by regular, certified, or registered mail; by email, upon agreement of the parties; or by fax~~]. By order, the judge may exempt a party from serving certain documents or materials on all parties.

(2) Certificate of service. A person filing a document shall include a certificate of service that certifies compliance with this section.

(A) A certificate of service shall be sufficient if it substantially complies with the following example: "Certificate of Service: I certify that on {date}, a true and correct copy of this {name of document} has been sent to {name of opposing party or authorized representative for the opposing party} by {specify method of delivery, e.g., regular mail, fax, certified mail.} {Signature}"

(B) If a filing does not certify service, SOAH may:

*(i)* return the filing;

*(ii)* send a notice of noncompliance to all parties, stating the filing will not be considered until all parties have been served; or

*(iii)* send a copy of the filing to all parties.

(3) Presumed time of receipt of served documents. The following rebuttable presumptions shall apply regarding a party's receipt of documents served by another party:

(A) If a document was hand-delivered to a party, the judge shall presume that the document was received on the date of filing at SOAH.

(B) If a document was served by use of an electronic filing service or a commercial delivery service [~~courier-receipted overnight delivery~~], the judge shall presume that the document was received no later than the next business day after filing at SOAH.

(C) If a document was served by mail, [~~regular, certified, or registered mail, or non-overnight courier-receipted delivery,~~] the judge shall presume that it was received no later than three days after mailing.

(D) If a document was served by fax or email before 5:00 p.m. on a business day, the judge shall presume that the document was received on that day; otherwise, the judge shall presume that the document was received on the next business day.

(4) Burden on sender. The sender has the burden of proving date and time of service.

(b) Method of service by parties in all cases referred by PUC or TCEQ. The procedural rules of the PUC and TCEQ govern the parties' service of documents in cases referred by those agencies.

(c) Service of SOAH-issued documents by email. Parties may be served all SOAH-issued orders, proposals for decision, decisions, and other SOAH-issued documents in each case to which the requestor is a party, by subscribing to SOAH's email service, subject to the following:

(1) Parties must access SOAH's public website, enter the link "Request Email Service," and submit a completed consent form "Request to be Served by E-mail."

(2) Parties requesting to be served SOAH-issued documents by email shall thereafter be served SOAH-issued documents only by email and shall no longer receive paper copies or any other form of service of such documents. Service of SOAH-issued documents by email applies to all SOAH dockets to which the requestor is a party.

(3) Parties who request service of SOAH-issued documents by email waive any right to confidentiality of their email address, which is added to the public service list for each SOAH docket to which the requestor is a party and is viewable on SOAH's public website [~~through SOAH's Case Information System~~].

(4) Parties requesting to be served SOAH-issued documents by email shall:

(A) maintain a current email address and provide that email address to SOAH through the consent form "Request to be Served by E-mail";

(B) notify SOAH of any change to their email address in writing; and

(C) ensure that email filters and settings allow the delivery of emails from SOAH.

(5) Parties may rescind the election to be served SOAH-issued documents by email, but the rescission will not be effective until communicated to SOAH and all other parties in writing.

(6) Service of SOAH-issued documents by email is not available for SOAH's non-public cases.

(7) Requesting and consenting to service by email of SOAH-issued documents does not affect a party's duties to serve other parties with filings at SOAH as described in this subchapter.

(8) SOAH reserves the right to discontinue the provision of email service as described in this subsection and replace such service with the use of the electronic filing manager established by the Office of Court Administration.

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 June 6, 2019.

TRD-201901703
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: July 21, 2019
For further information, please call: (512) 463-9726

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# TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 100. CHARTERS

### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

### DIVISION 1. GENERAL PROVISIONS

**19 TAC §100.1002**

The Texas Education Agency (TEA) proposes an amendment to §100.1002, concerning open-enrollment charter school application and selection procedures and criteria. The proposed amendment would revise the current rule concerning procedures for application review and criteria for advancement in the application process.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 100.1002 sets forth the procedures pertaining to the application for an open-enrollment charter school. It describes the process by which the commissioner shall review applications initially, how the applications shall be evaluated both within TEA and by external reviewers, and procedures to be followed related to the award of a charter.

The proposed amendment to §100.1002(b) would clarify current TEA procedures for review of applications for charter. The proposed amendment would draw a clear distinction between TEA procedure when an application is incomplete and TEA procedure when an application contains a fundamental deficiency. If an application is not complete, the TEA will notify the applicant and allow five business days for missing documents to be submitted. If an application does not meet the standards in TEC, §12.101, and 19 TAC §100.1015, the TEA will remove the application without further processing.

The proposed amendment to §100.1002(h) would add fiscal soundness to the commissioner's criteria for application review. Prospects for the school's long-term financial health are an important consideration in keeping with TEA's mission to improve outcomes for all public school students.

The proposed amendment to §100.1002(j) would clarify statutory authority regarding a school's unacceptable performance rating.

The proposed amendment to §100.1002(q) would remove the term "forfeited" and instead state that if a charter does not open and serve students within the timeline established in the rule, the charter is automatically considered void and returned to the commissioner. This change would parallel language in 19 TAC §100.1015(a) and clarify that that subsection is applicable to a charter returned under the circumstances of 19 TAC §100.1002(q).

FISCAL IMPACT: Joe Siedlecki, associate commissioner for charters and innovations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, 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 expand an existing regulation. The proposed amendment would add language to specify that when determining whether to grant an open-enrollment charter, the commissioner may consider indications that the charter school will be fiscally viable from its inception.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not 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 clarifying current TEA procedures for review of applications for charter and the commissioner's criteria for application review. 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 June 21, 2019, and ends July 22, 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 June 21, 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/. 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), §12.101, which authorizes the commissioner to grant a charter for an open-enrollment charter school to an eligible entity, describing procedures the commissioner must follow to thoroughly investigate and evaluate such applicants; TEC, §12.1011, which describes criteria by which the commissioner may grant charters for open-enrollment charter schools to certain high-performing entities; TEC, §12.110, which requires the commissioner to adopt an application form and procedures around application for a charter for an open-enrollment charter school; TEC, §12.113, which sets forth the standards to be met by each charter the commissioner grants for an open-enrollment charter school; TEC, §12.152, which authorizes the commissioner to grant a charter for an open-enrollment charter school on the application of a public senior college or university or public junior college; TEC, §12.153, which authorizes the commissioner to adopt rules to implement TEC, Chapter 12, Subchapter E, College or University or Junior College Charter School; and TEC, §12.154, which specifies the content of an application for charter from a public senior college or university or a public junior college.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.101, 12.1011, 12.110, 12.113, 12.152, 12.153, and 12.154.

*§100.1002. Application and Selection Procedures and Criteria.*

(a) Prior to each selection cycle, the commissioner of education shall approve an application form for submission by applicants seeking to operate a high quality open-enrollment charter school. The application form shall address the content requirements specified in Texas Education Code (TEC), §12.111, and contain the following:

(1) the timeline for selection;

(2) required applicant conferences and training prerequisites;

(3) scoring criteria and procedures for use by the review panel selected under subsection (d) of this section;

(4) selection criteria, including the minimum score necessary for an application to be eligible for selection; and

(5) the earliest date an open-enrollment charter school selected in the cycle may open.

(b) The Texas Education Agency (TEA) shall review applications submitted under this section.

(1) If the TEA determines that an application is not complete, the TEA shall notify the applicant and allow five business days for the applicant to submit the missing documents. If the documents are not timely submitted, the TEA shall remove the application without further processing. [~~and/or~~]

(2) If the TEA determines that an application does not meet the standards in TEC, §12.101, and §100.1015 of this title (relating to Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter), the TEA shall [~~notify the applicant and allow five business days for the applicant to submit the missing documents. If the documents are not timely submitted, the TEA shall~~] remove the application without further processing.

(3) The TEA shall establish procedures and schedules for returning applications without further processing.

(4) Failure of the TEA to identify any deficiency, or notify an applicant thereof, does not constitute a waiver of the requirement and does not bind the commissioner.

(c) Upon written notice to the TEA, an applicant may withdraw an application.

(d) Applications that are determined to meet the standards established under TEC, §12.101, and §100.1015 of this title shall be reviewed and scored by an external application review panel selected by the commissioner from a pool of qualified candidates identified through a request for qualification (RFQ) process. The panel shall review and score applications in accordance with the procedures and criteria established in the application form. Review panel members shall not discuss applications with anyone except the TEA staff. Review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of the selection process for open-enrollment charters. Members of the review panel shall disclose to the TEA immediately the discovery of any past or present relationship with an open-enrollment charter applicant, including any current or prospective employee, agent, officer, or director of the sponsoring entity, an affiliated entity, or other party with an interest in the selection of the application.

(e) Applications that are not scored at or above the minimum score established in the application form are not eligible for commissioner selection during that cycle. The commissioner may, at the commissioner's sole discretion, decline to grant an open-enrollment charter to an applicant whose application was scored at or above the minimum score. No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.

(f) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website; therefore, the following must be excluded or redacted:

(1) personal email addresses;

(2) proprietary material;

(3) copyrighted material;

(4) documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and

(5) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

(g) The commissioner or the commissioner's designee(s) in coordination with the TEA staff shall interview applicants whose applications received the minimum score established in the application form. The commissioner may specify individuals required to attend the interview and may require the submission of additional information and documentation prior or subsequent to an interview.

(h) The commissioner may consider criteria that include, but are not limited to, the following when determining whether to grant an open-enrollment charter:

(1) indications that the charter school will improve student performance;

(2) innovation evident in the program(s) proposed for the charter school;

(3) indications that the charter school will be fiscally viable from its inception;

(4) [~~(3)~~] impact statements from any school district whose enrollment is likely to be affected by the proposed charter school, including information relating to any financial difficulty that a loss in enrollment may have on a district;

(5) [~~(4)~~] evidence of parental and community support for or opposition to the proposed charter school;

(6) [~~(5)~~] the qualifications, backgrounds, and histories of individuals and entities who will be involved in the management and educational leadership of the proposed charter school;

(7) [~~(6)~~] the history of the sponsoring entity of the proposed charter school, as defined in the application form;

(8) [~~(7)~~] indications that the governance structure proposed for the charter school is conducive to sound fiscal and administrative practices; and

(9) [~~(8)~~] indications that the proposed charter school would expand the variety of charter schools in operation with respect to the following:

(A) representation in urban, suburban, and rural communities;

(B) instructional settings;

(C) types of eligible entities;

(D) types of innovative programs;

(E) student populations and programs; and

(F) geographic regions.

(i) In addition to the criteria specified in subsection (h) of this section, the commissioner shall approve or deny an application based on:

(1) documented evidence gathered through the application review process;

(2) merit; and

(3) other criteria, including:

(A) criteria related to capability of carrying out the responsibilities as provided in the charter; and

(B) the likelihood of operating a high-quality charter, including previous experience operating a public school(s).

(j) Priority shall be given to an applicant that proposes a school in an attendance zone of a school district campus assigned an unacceptable [~~"academically unacceptable"~~] performance rating under TEC, §39.054, for two preceding years [~~as defined by §100.1001(26) of this title (relating to Definitions)~~].

(k) An applicant or any person or entity acting on behalf of an applicant for an open-enrollment charter shall not knowingly communicate with any member of an external application review panel concerning a charter school application beginning on the date the application is submitted and ending 90 days after the commissioner's proposal. State Board of Education (SBOE) members and/or the TEA staff may initiate communications with an applicant. On finding a material violation of the no-contact period, the commissioner shall reject the application and deem it ineligible for award.

(l) The commissioner shall notify the SBOE of each charter the commissioner proposes to grant under this subchapter. A charter proposed by the commissioner will be granted on the 90th day after the date on which the SBOE receives the notice from the commissioner unless:

(1) the SBOE votes against the charter in accordance with TEC, §12.101(b-0); or

(2) the commissioner withdraws the proposal.

(m) The commissioner may defer granting an open-enrollment charter subject to contingencies and shall require fulfillment of such contingencies before the charter school is issued a contract. Such conditions must be fulfilled by the awardee, as determined by the commissioner, no later than two months after the date of the notification of contingencies by the commissioner or the proposal of the charter is withdrawn. The commissioner may establish timelines for submission by the awardee of any documentation to be considered by the commissioner in determining whether contingencies have been met. An applicant that is not granted a charter may reapply.

(n) The commissioner may decline to finally grant or award a charter based on misrepresentations during the application process or failure to comply with commissioner rules, application requirements, or SBOE rules.

(o) An open-enrollment charter shall be in the form and substance of a written contract signed by the commissioner, the chair of the charter holder, and the chief operating officer of the school, but is not a contract for goods or services within the meaning of Texas Government Code, Chapter 2260. The chief operating officer of the school shall mean the chief executive officer of the open-enrollment charter holder under TEC, §12.1012.

(p) The charter contract shall be for an initial term of five years beginning on the date the contract is signed by the commissioner following the granting of the initial charter contract.

(q) The charter must open and serve students within one school year of the awarding of the charter contract. The commissioner, in the commissioner's discretion, may grant a single-year extension. Failure to operate within one year, or two years if an extension is granted, constitutes an automatic abandonment of the charter contract and the charter is automatically considered void and returned to the commissioner [~~forfeited~~].

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 June 10, 2019.

TRD-201901708
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: July 21, 2019
For further information, please call: (512) 475-1497

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## 19 TAC §100.1015

The Texas Education Agency (TEA) proposes an amendment to §100.1015, concerning applicants for an open-enrollment charter, public senior college or university charter, or public junior college charter. The proposed amendment would clarify terminology; remove the exception to the minimum school size requirement; establish an exception to the minimum qualification requirements for schools that serve youth referred to or placed in a residential trade center by a local or state agency; amend the timeframe for charter schools to have at least 50% of their students in tested grades; and modify the list of content that, if included, would cause an application to be removed from consideration.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 100.1015 describes requirements of an application for open-enrollment charter, public senior college or university charter, or public junior college charter. It sets forth requirements for an entity to be eligible to apply, and it details financial, governing, educational, and operational standards that must be thoroughly addressed in the application in order for it to be considered by the commissioner.

The proposed amendment to §100.1015 would clarify the commissioner's criteria for review of an application for charter by adding language to help explain what is meant by the term *financial standards* in subsection (b)(1), *governing standards* in subsection (b)(2), and *educational and operational standards* in subsection (b)(3).

In subsection (b)(1)(C)(iii), the proposed amendment would parallel a statutory change involving minutes of instruction rather than days.

In subsection (b)(1)(D), the proposed amendment would remove an allowance for a lower-than-prescribed number of students.

The rule currently states that an entity applying for a charter must commit to serving a minimum of 100 students at all times to ensure financial viability but allows the entity to provide an explanation if that number is not optimum and/or attainable. Removal of the allowance in the proposed amendment would help eliminate ambiguity with regard the commissioner's criteria for financial viability.

The proposed amendment would set forth an exception to subsection (b)(3)(F)(ii), which currently mandates that all teachers at the school have a baccalaureate degree regardless of subject matter taught and add new subsection (b)(3)(F)(iv) to state that in an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree subject to the requirements described in 19 TAC §100.1212, Personnel. This change would align the rule with House Bill 1469, 85th Texas Legislature, Regular Session, 2017.

The proposed amendment would modify subsection (b)(3)(G) to require that schools have at least 50% of their students in tested grades by the start of the charter school's third year of operation rather than the fifth year of operation currently specified in the rule. Requiring that at least 50% of students be in tested grades by a school's third year would accelerate progress toward TEA's goal to increase transparency, fairness, and rigor in academic performance.

Finally, the proposed amendment to subsection (b)(4)(E) would add items to the list of improper content in an application that, if included, would cause the application to be removed from consideration. This would clarify TEA's procedure in response to an applicant's plagiarism infractions or other unauthorized use of third parties' work product, in addition to its procedure regarding violations of state or federal law.

FISCAL IMPACT: Joe Siedlecki, associate commissioner for charters and innovations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal beyond what is required by statute. TEC, §12.129, requires charter schools employing teachers for noncore vocational courses without a baccalaureate degree to ensure those teachers obtain 20 hours of training in classroom management. This statutory requirement may impose a cost on open-enrollment charter schools.

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 expand an existing regulation and increase the number of individuals subject to its applicability. The proposed amendment would reflect an exception to the requirement of TEC, §12.129, that all open-enrollment charter school principals and teachers have a baccalaureate degree by specifying that in an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree as long as certain criteria are met. In addition, the proposed amendment would remove an allowance for an entity applying for a charter to explain fully why serving a minimum of 100 students is not optimum and/or attainable, require that charter schools have at least 50% of their students in tested grades by the start of the charter school's third year of operation, and add items to the list of content that, if included, would cause an application to be removed from consideration.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not 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 clarifying criteria for review of an application for charter and parallel already-existing statutory authority. The proposed amendment may impose a cost on persons, but not beyond what is required by statute. TEC, §12.129, requires charter schools employing teachers for noncore vocational courses without a baccalaureate degree to ensure those teachers obtain 20 hours of training in classroom management. This statutory requirement may impose a cost on individuals.

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 June 21, 2019, and ends July 22, 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 June 21, 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/. 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), §12.101, which authorizes the

commissioner to grant a charter for an open-enrollment charter school to an eligible entity, describing procedures the commissioner must follow to thoroughly investigate and evaluate such applicants; TEC, §12.110, which requires the commissioner to adopt an application form and procedures around application for a charter for an open-enrollment charter school; TEC, §12.129, which describes minimum qualifications for principals and teachers in an open-enrollment charter school; TEC, §12.152, which authorizes the commissioner to grant a charter for an open-enrollment charter school on the application of a public senior college or university or public junior college; TEC, §12.153, which authorizes the commissioner to adopt rules to implement TEC, Chapter 12, Subchapter E, College or University or Junior College Charter School; TEC, §12.154, which specifies the content of an application for charter from a public senior college or university or a public junior college; and TEC, §12.156, which provides that TEC, Chapter 12, Subchapter D, Open-Enrollment Charter School, applies to a college or university charter school or junior college charter school except where otherwise indicated in TEC, Chapter 12, Subchapter E.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.101, 12.110, 12.129, 12.152, 12.153, 12.154, 12.156.

*§100.1015. Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter.*

(a) No applicant will be considered that has, within the preceding ten years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned or that is considered to be a corporate affiliate of, or substantially related to, an entity that, within the preceding ten years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned. The commissioner of education may not grant more than one charter for an open-enrollment charter school to any charter holder.

(b) Notwithstanding any other provisions in this chapter, the following provisions apply to open-enrollment charter applicants and successful charter awardees authorized by the commissioner under requests for applications adopted after November 1, 2012.

(1) Financial standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall meet each of the following financial standards to demonstrate the financial viability of the charter, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) Any existing entity applying for the charter must be in good standing with the Internal Revenue Service (IRS), the Texas Secretary of State, and the Texas Comptroller of Public Accounts. An existing entity must also be in good standing with all regulatory agencies in its home state.

(B) Each entity must provide evidence of financial competency and sustainability by providing evidence of an appropriate business plan that includes each of the following:

*(i)* a succinct long-term vision for the proposed school;

*(ii)* three to five core values or beliefs, with succinct explanations, for the operation of the proposed school;

*(iii)* a brief analysis of the target location(s) for the proposed school with a succinct explanation of the reasons for choosing the location(s);

*(iv)* a brief analysis of the competition in the area(s) for the same students and the methods that the proposed school will use to recruit and retain students;

*(v)* a brief narrative of the growth plan for the first five years of operation of the proposed school that matches all projections included in the budget and considers the potential expansion of competition in the area for the same student population;

*(vi)* a list of risk factors, with brief explanations, that could jeopardize the viability of the proposed school;

*(vii)* a list of success factors, with brief explanations, that the proposed school founders have analyzed and determined will outweigh the risks;

*(viii)* an unqualified opinion as provided in the most recent audited financial statements of the applicant if the entity has been in existence at least a year;

*(ix)* a five-year budget projection of revenue and expenditures for the proposed charter using the template that will be provided in the request for applications (RFA);

*(x)* a narrative response, based on the revenue and expenditures provided in the template that will be provided in the RFA, detailing the ways in which the budget projections were derived, including any assumptions used; and

*(xi)* support documentation for budget projections as detailed in the budget template that will be provided with the RFA.

(C) Loans and lines of credit are liabilities that must be repaid and will be considered as available funding. Loans or lines of credit may be characterized as assets and as cash on hand. The applicant must identify in the template provided in the RFA available funding for start-up costs, as documented by current assets listed in the balance sheet and/or pledges for donations that do not require repayment, meeting or exceeding the following amounts:

*(i)* the total amount of funds available;

*(ii)* the amount per student proposed to be served in the first year of operation; and

*(iii)* the amount of minutes [~~days~~] of operation funded by the amount in this subparagraph, defined by the total annual budget divided by 75,600 minutes [~~180 days~~].

(D) To ensure financial viability, the entity must commit to serving a minimum of 100 students at all times [~~or shall explain fully why such a number is not optimum and/or attainable~~].

(E) The entity applying for the charter must have liabilities that are less than 80% of its assets.

(F) The aggregate of projected budgeted expenses must be less than the aggregate of projected total revenues by the end of the first year of operation provided that:

*(i)* projected revenues are documented and use the amount per student designated in the RFA when calculating Foundation School Program (FSP) funding that will begin during the first year of operation, or the applicant provides compelling evidence as to the reasons that its FSP will be higher than the rate designated in the RFA; and

*(ii)* all reasonable start-up and first-year expenditures are included in the budgets or an explanation for not needing to include them is included in the budget narratives.

(G) No more than 27% of the budget may be allocated for administrative costs for charters with an anticipated first-year enrollment of 500 or fewer students, or no more than 16% of the budget may be allocated for administrative costs for charters with an anticipated first-year enrollment of more than 500 students. Administrative costs are those costs identified as such in Texas Education Agency (TEA) financial publications for charter schools.

(2) Governing standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall meet each of the following governing standards to demonstrate sound establishment and oversight of the charter's educational mission, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation, except as provided by Texas Education Code (TEC), §12.1054(a)(2).

(A) To qualify as an eligible entity in accordance with TEC, §12.101(a)(3), as an organization that is exempt under 26 United States Code (USC), §501(c)(3), the applicant must have its own 501(c)(3) exemption in its own name, as evidenced by a 501(c)(3) letter of determination issued by the IRS. Thus, an applicant cannot attain status as an eligible entity that is exempt under 26 USC, §501(c)(3), as a disregarded entity, a supporting organization, or a member of a group exemption of a currently recognized 501(c)(3) tax-exempt organization. A religious organization, sectarian school, or religious institution that applies must have an established separate non-sectarian entity that is exempt under 26 USC, §501(c)(3), to be considered an eligible entity. Entities that have applied for 501(c)(3) status, but have yet to receive the exemption from the IRS, must provide the letter of determination of the 501(c)(3) status issued by the IRS prior to consideration for interview. Failure to secure 501(c)(3) status deems an entity ineligible.

(B) The articles of incorporation, the Certificate of Filing, the Certificate of Formation, and the bylaws of the applicant must vest the management of the corporate affairs in the board of directors. The management of the corporate affairs shall not be vested in any member or members nor shall the corporate charter or bylaws confer on or reserve to any other entity the ability to overrule, remove, replace, or name the members of the board of the charter holder during the duration of the charter's existence. However, if the applicant or its affiliate is a high performing entity, then it may vest management in a member provided that the entity may change the members of the governing body of the charter holder prior to the expiration of a member's term only with commissioner's written approval. An academic performance rating that is below acceptable in another state, as determined by the commissioner, does not satisfy this section. Any other change in the aforementioned governance documents pursuant to the management of the corporate affairs of the nonprofit entity may only occur with the approval of the commissioner in accordance with §100.1033(b) of this title (relating to Charter Amendment) or in accordance with any other power granted to the commissioner in state law or rule.

(C) If the sponsoring entity is a 501(c)(3) nonprofit corporation, its bylaws must clearly state that the charter holder and charter school will comply with the Texas Open Meetings Act and will appropriately respond to Texas Public Information Act requests.

(D) No family members within the third degree of consanguinity or second degree of affinity shall serve on the charter holder or charter school board.

(E) No family member within the third degree of consanguinity or third degree of affinity of any charter holder board member, charter school board member, or superintendent shall receive compensation in any form from the charter school, the charter holder, or any management company that operates the charter school.

(F) The applicant shall specify that the governing body accepts and will not delegate ultimate responsibility for the school, including academic performance and financial and operational viability, and is responsible for overseeing any management company providing management services for the school.

(3) Educational and operational standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall successfully meet each of the following educational and operational standards to ensure careful alignment of curricula to the Texas Essential Knowledge and Skills, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

(A) The charter applicant must clearly explain the overall educational philosophy to be promoted at the school, if authorized.

(B) The charter applicant must clearly explain in succinct terms the specific curricular programs that the school, if authorized, will provide to students and the ways in which the charter staff, board members, and others will use these programs to maintain high expectations for and the continuous improvement of student performance.

(C) The charter applicant must clearly explain in succinct terms the ways in which the school, if authorized, will differ from the traditional neighborhood schools or charter schools that currently operate in the area where the school or schools would be located.

(D) The charter applicant must clearly explain how classroom practices will reflect the connections among curriculum, instruction, and assessment.

(E) The charter applicant must describe in succinct terms the specific ways in which the school, if authorized, will:

*(i)* address the instructional needs of students performing both below and above grade levels in major content areas;

*(ii)* differentiate instruction to meet the needs of diverse learners;

*(iii)* provide a continuum of services in the least restrictive environment for students with special needs as required by state and federal law;

*(iv)* provide bilingual and/or English as a second language instruction to English language learners as required by state law; and

*(v)* implement an educational program that supports the enrichment curriculum, including fine arts, health education, physical education, technology applications, and, to the extent possible, languages other than English.

(F) As evidenced in required documentation, the charter applicant must commit to hiring personnel with appropriate qualifications as follows.

*[(ii)* ~~Teachers in all core subjects must be degreed and have demonstrated competency in the subjects in which they will be assigned to teach as required in federal law.~~]

*(i)* [~~(ii)~~] Except as provided in clause (iv) of this subparagraph, all [~~All~~] teachers, regardless of subject matter taught, must have a baccalaureate degree.

*(ii)* [~~(iii)~~] Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required in state and/or federal law.

*(iii)* [~~(iv)~~] Paraprofessionals must be certified as required to meet state and/or federal law.

*(iv)* In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree, subject to the requirements described in §100.1212 of this title (relating to Personnel).

(G) The charter applicant must commit to serving, by its third [~~fifth~~] year of operation, at least as many students in grades assessed for state accountability purposes as those served in grades not assessed for state accountability purposes.

(H) The charter applicant must provide a final copy of any management contract, if applicable, that will be entered into by the charter holder that will provide any management services, including the monetary amount that will be paid to the management company for providing school services.

(4) Additional requirements. An applicant for a competitive open-enrollment charter to be considered for award, as authorized by TEC, Chapter 12, Subchapter D, must ensure that each of the following occur or the application will be disqualified.

(A) The application is complete and meets all of the requirements set forth in paragraphs (1)-(3) of this subsection, as determined by the commissioner or the commissioner's designee.

*(i)* The commissioner or the commissioner's designee may conclude the review of an application once it is apparent that the application is incomplete or that the application fails to meet one or more of the requirements set forth in paragraphs (1)-(3) of this subsection.

*(ii)* Any applicant who submits an incomplete application, an application that fails to meet one or more of the requirements as set forth in paragraphs (1)-(3) of this subsection, or an application that contains information referenced in subparagraph (D)(i)-(iii) of this paragraph will be notified pursuant to §100.1002(b) of this title (relating to Application and Selection Procedures and Criteria) by the TEA division responsible for charter schools that the application has been removed from consideration of award and will not be sent forward for scoring by the external review panel.

*(I)* An applicant that is notified that the application has been removed from consideration of award by the commissioner or the commissioner's designee will have five business days to respond in writing and direct TEA staff responsible for charter schools to the specific parts of the application, which was received by the application deadline, that address the identified issue or issues, or to submit missing attachments.

*(II)* Once any additional review is complete, the decision of the commissioner or the commissioner's designee is final and may not be appealed.

(B) A representative of any applicant must not initiate contact with any employee of the TEA, other than the commissioner or commissioner's designee, regarding the content of its application from the time the application is submitted until the time of the commissioner award of charters in the applicable application cycle is final, following the 90-day State Board of Education (SBOE) veto period.

(C) An applicant or person or entity acting on behalf of the applicant may not provide any item of value, directly or indirectly, to the commissioner, any employee of the TEA, or member of the SBOE during the no-contact period as defined in §100.1002(k) of this title.

(D) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website. Therefore, the following must be excluded from all applications:

*(i)* personal email addresses;

*(ii)* proprietary material;

*(iii)* copyrighted material;

*(iv)* documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and

*(v)* any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

(E) Any application that includes material referenced in subparagraph (D)(ii)-(v) [~~(D)(iv) and (v)~~] of this paragraph will be removed from consideration without any further opportunity for review [~~as described in subparagraph (A)(ii)(I) of this paragraph~~].

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 June 10, 2019.

TRD-201901709
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: July 21, 2019
For further information, please call: (512) 475-1497

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# CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

## SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

### 19 TAC §109.1001

The Texas Education Agency (TEA) proposes an amendment to §109.1001, concerning financial accountability. The proposed amendment would update financial accountability rating information and rating worksheets for school districts, open-enrollment

charter schools, and charter schools operated by public institutions of higher education (IHEs).

BACKGROUND INFORMATION AND JUSTIFICATION: Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that the TEA will analyze to assign financial accountability ratings for school districts and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district or an open-enrollment charter school is to report to parents and taxpayers in the district.

The proposed amendment would clarify the financial accountability rating indicators used to determine each school district's rating for the 2018-2019 rating year and subsequent years by revising the ratings worksheet calculations in §109.1001(e)(4), (e)(5), (f)(4), and (f)(5). The proposed amendment would also include modifications to the rating worksheets in §109.1001(e)(4), (e)(5), (f)(4), (f)(5), (g)(1), and (g)(2) to clarify that financial accountability ratings for a rating year are based on the data from the prior fiscal year. The proposed worksheets, dated June 2019, would differ from the current worksheets, dated February 2018, as follows.

*Figure: 19 TAC §109.1001(e)(4)*

The header in the worksheet would be amended to clarify that the rating worksheet is for multiple rating years based on corresponding prior fiscal year end data.

The Determination of School District Rating table would be revised to include the word "Achievement" beside the adopted terminology for each rating. The ratings terminology would change to "Superior Achievement," "Above Standard Achievement," and "Meets Standard Achievement."

Indicator 4 would be revised to amend the calculation text to allow for Internal Revenue Service (IRS) payments made within 30 days to be considered timely payments.

Indicator 5 would be revised to amend the calculation by adding variable G for Other Post Employment Benefit (OPEB). The OPEB liability would be added to the calculation to account for required changes in accounting requirements that adversely affect the total net position amount.

Indicator 11 would be revised to simplify the calculation for the administrative cost ratio.

*Figure: 19 TAC §109.1001(e)(5)*

The header in the worksheet would be amended to clarify that the rating worksheet is for multiple rating years based on corresponding prior fiscal year end data.

Indicator 4 would be revised to amend the calculation text to allow for IRS payments made within 30 days to be considered timely payments.

Indicator 5 would be revised to amend the calculation by adding variable G for OPEB. The OPEB liability would be added to the calculation to account for required changes in accounting requirements that adversely affect the total net position amount.

Indicator 6 would be revised to clarify terminology to match the calculation and to correct the calculation by removing an extra parenthesis.

Indicator 7 would be revised to clarify terminology to match the calculation.

Indicator 10 would be revised to clarify terminology to match the calculation and to correct the order of operation in the calculation by adding and removing an extra parenthesis.

Indicator 13 would be revised to simplify the calculation for the administrative cost ratio.

Indicator 20 would be revised to clarify when the requirement for the indicator must be met.

*Figure: 19 TAC §109.1001(f)(4) and Figure: 19 TAC §109.1001(f)(5)*

The headers in the worksheets would be amended to clarify that the rating worksheets are for multiple rating years based on corresponding prior fiscal year end data.

Indicator 4 would be revised to amend the calculation text to allow for IRS payments made within 30 days to be considered timely payments.

*Figure: 19 TAC §109.1001(g)(1) and Figure: 19 TAC §109.1001(g)(2)*

The headers in the worksheets would be amended to clarify that the rating worksheets are for multiple rating years based on corresponding prior fiscal year end data.

FISCAL IMPACT: Leo Lopez, associate commissioner for school finance, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, 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 expand an existing regulation by updating the rating worksheets for school districts, open-enrollment charter schools, and charter schools operated by public IHEs.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not 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. Lopez 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 the provisions of the financial accountability rating system align to make the indicators uniform for all school districts and charter schools and would provide a fair and equitable rating for all school districts and charter schools. 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 June 21, 2019, and ends July 22, 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 June 21, 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/. 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), §12.104, which subjects open-enrollment charter schools to the prohibitions, restrictions, or requirements relating to public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and TEC, Chapter 39A; TEC, §39.082, which states that the financial performance of a charter school operated by a public institution of higher education under TEC, Chapter 12, Subchapter D or E, shall be evaluated using only the indicators adopted under TEC, §39.082, determined by the commissioner by rule as appropriate to accurately measure the financial performance of such charter schools. The statute also requires the commissioner to develop and implement a financial accountability rating system for public schools and establishes certain minimum requirements for the system, including an appeals process; TEC, §39.083, which requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report; TEC, §39.085, which requires the commissioner to adopt rules to implement TEC, Chapter 39, Subchapter D, which addresses financial accountability for public schools; and TEC, §39.151, which requires the commissioner to provide a process by which a district or charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules, which implement each requirement of statute applicable to districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.104, 39.082, 39.083, 39.085, and 39.151.

*§109.1001. Financial Accountability Ratings.*

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

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) - (3) (No change.)

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated June 2019 [~~February 2018~~] for rating years 2017-2018 through 2019-2020." The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(4)

[~~Figure: 19 TAC §109.1001(e)(4)~~]

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated June 2019 [~~February 2018~~] for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(5)

[~~Figure: 19 TAC §109.1001(e)(5)~~]

(6) (No change.)

(f) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) - (3) (No change.)

(4) The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 are based on financial data from fiscal years 2017, 2018, and 2019, respectively, and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated June 2019 [~~February 2018~~] for rating year 2017-2018." The financial accountability rating indicators for rating years 2017-2018, 2018-2019, and 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(4)

[~~Figure: 19 TAC §109.1001(f)(4)~~]

(5) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated June 2019 [~~February 2018~~] for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(5)

[~~Figure: 19 TAC §109.1001(f)(5)~~]

(6) (No change.)

(g) The TEA will base the financial accountability rating of a charter school operated by a public IHE on its overall performance on

the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) The financial accountability rating indicators for rating year 2016-2017 are based on fiscal year 2016 financial data and are provided in the figure in this paragraph entitled "IHE Charter FIRST - Rating Worksheet Dated June 2019 [~~February 2018~~] for rating years 2016-2017 through 2019-2020." The financial accountability rating indicators for rating years 2016-2017 through 2019-2020 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(g)(1)

[~~Figure: 19 TAC §109.1001(g)(1)~~]

(2) The financial accountability rating indicators for rating year 2020-2021 are based on fiscal year 2020 financial data and are provided in the figure in this paragraph entitled "IHE Charter FIRST - Rating Worksheet Dated June 2019 [~~February 2018~~] for rating year 2020-2021." The financial accountability rating indicators for rating years after 2020-2021 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(g)(2)

[~~Figure: 19 TAC §109.1001(g)(2)~~]

(h) - (q) (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 June 10, 2019.

TRD-201901710

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: July 21, 2019

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

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# TITLE 22. EXAMINING BOARDS

## PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

### CHAPTER 461. GENERAL RULINGS

**22 TAC §461.7**

The Texas State Board of Examiners of Psychologists proposes the repeal of rule §461.7, License Statuses. The proposed repeal will correspond with the proposal of a new rule §461.7, published in this edition of the *Texas Register.*

Overview and Explanation of the Proposed Repeal. The proposed repeal, in conjunction with the proposed new rule §461.7, is necessary to reduce the regulatory burden associated with moving a license to and from inactive status, as well as simplifying the requirements for the process.

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

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to applicants and licensees because the corresponding proposed new rule, published elsewhere in this edition of the *Texas Register,* will provide greater clarity and consistency in the Board's rules, as well as reduce regulatory licensing burdens. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Board protect the public.

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

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

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

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

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

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

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

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

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses. If the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; 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 repeal 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

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

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

*§461.7. License Statuses.*

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 June 4, 2019.

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

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**22 TAC §461.7**

The Texas State Board of Examiners of Psychologists proposes new rule §461.7, License Statuses.

Overview and Explanation of the Proposed Rule. The proposed new rule is necessary to reduce the regulatory burden associated with moving a license to and from inactive status, as well as simplifying the requirements for the process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*§461.7. License Statuses.*

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

(b) Inactive Status.

(1) A licensee with an unrestricted active license may elect inactive status through the Board's online licensing system. A licensee who elects inactive status must return his or her current renewal certificate or permit for the license to the Board and pay the associated fee.

(2) A licensee with an inactive license is not required to comply with the professional development requirements set forth in Board rule 461.11 while his or her license is inactive.

(3) The inactive status period for a license shall coincide with the license renewal period. At the end of the renewal period, if the inactive status has not been renewed or the license returned to active status, the license will expire.

(4) In order to continue on inactive status, an inactive licensee must renew his or her inactive status each renewal period. Licensees may renew their inactive status through the Board's online licensing system by completing the online renewal requirements and paying the associated fee.

(5) An inactive license may be reactivated at any time by submitting a written request to return to active status to the Board's office. When reactivating a license, a licensee must pay the renewal fee associated with the license. A license that has been reactivated is subject to the standard renewal schedule and requirements, including renewal and late fees. Notwithstanding the foregoing, a license that is reactivated within 60 days of its renewal date will be considered as having met all renewal requirements and will be renewed for the next renewal period.

(6) Any licensee reactivating a license from inactive status must provide proof of completion of 40 hours of professional development meeting the requirements of Board rule §461.11 of this title (relating to Professional Development) before reactivation will occur. The professional development hours must have been obtained within the 24 month period preceding the request for reactivation.

(7) A licensee wishing to reactivate his or her license that has been on inactive status for four years or more must take and pass the Jurisprudence Exam with the minimum acceptable score as set forth in Board rule §463.14 of this title (relating to Written Examinations) unless the licensee holds another license on active status with this Board.

(8) A licensee with a pending complaint may not place a license on inactive status. If disciplinary action is taken against a licensee's inactive license, the licensee must reactivate the license until the terms of the disciplinary action or restricted status have been terminated. Failure to reactivate a license when required by this paragraph shall constitute grounds for further disciplinary action.

(c) Delinquent Status. A licensee who fails to renew his/her license for any reason when required is considered to be on delinquent status. Any license delinquent for more than 12 consecutive months shall expire. The Board may sanction a delinquent licensee for violations of Board rules.

(d) Restricted Status. Any license that is suspended, on probated suspension, or required to fulfill some requirements in a Board order is a restricted license.

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

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

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

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

(g) Expired Status. A license that has been delinquent for twelve months or more or any inactive license that is not renewed or reactivated is considered to be expired.

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

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

Filed with the Office of the Secretary of State on June 4, 2019.

TRD-201901660

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

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## 22 TAC §461.11

The Texas State Board of Examiners of Psychologists proposes an amendment to 22 TAC §461.11, Professional Development.

Overview and Explanation of the Proposed Rule. The proposed amendment is necessary to reduce regulatory burden, improve regulatory efficiency, and comport with the changes set out in proposed rule 22 TAC §471.1, published in this edition of the *Texas Register.*

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

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

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

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

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

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

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

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

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

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

The Board specifically invites comments from the public on the issues of whether or not the proposed rule amendment will have an adverse economic effect on small businesses. If the proposed rule amendment 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

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

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

*§461.11. Professional Development.*

(a) Requirements. All licensees of the Board are obligated to continue their professional education by completing a minimum of 40 [~~20~~] hours of professional development during each renewal period [~~year~~] that they hold a license from the Board regardless of the number

of separate licenses held by the licensee. Of these 40 [~~20~~] hours, all licensees must complete a minimum of six [~~three~~] hours of professional development [~~per year~~] in the areas of ethics, the Board's Rules of Conduct, or professional responsibility, and a minimum of six [~~three~~] hours in the area of cultural diversity (these include, but are not limited to age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and social economic status).

(b) Relevancy. All professional development hours must be directly related to the practice of psychology. The Board shall make the determination as to whether the activity or publication claimed by the licensee is directly related to the practice of psychology. In order to establish relevancy to the practice of psychology, the Board may require a licensee to produce, in addition to the documentation required by subsection (d) of this section, course descriptions, conference catalogs and syllabi, or other material as warranted by the circumstances. The Board does not pre-approve professional development credit. The Board shall not allow professional development credit for personal psychotherapy, workshops for personal growth, the provision of services to professional associations by a licensee, foreign language courses, or computer training classes.

(c) Professional development.

(1) Required hours may be obtained by participating in one or more of the following activities, provided that the specific activity may not be used for credit more than once:

(A) attendance or participation in a formal professional development activity for which professional development hours have been pre-assigned by a provider;

(B) teaching or attendance as an officially enrolled student in a graduate level course in psychology at a regionally accredited institution of higher education;

(C) presentation of a program or workshop; and

(D) authoring or editing publications.

(2) Providers include:

(A) national, regional, state, or local psychological associations; public school districts; regional service centers for public school districts; state or federal agencies; or psychology programs, or counseling centers which host accredited psychology training programs, at regionally accredited institutions of higher education; or

(B) other formally organized groups providing professional development that is directly related to the practice of psychology. Examples of such providers include: public or private institutions, professional associations, and training institutes devoted to the study or practice of particular areas or fields of psychology; and professional associations relating to other mental health professions such as psychiatry, counseling, or social work.

(3) At least half [~~(10)~~] of the required 40 [~~20~~] hours of professional development must be obtained from or endorsed by a provider listed in subsection (c)(2)(A) of this section.

(4) Credits will be provided as follows:

(A) For attendance at formal professional development activities, the number of hours pre-assigned by the provider.

(B) For teaching or attendance of a graduate level psychology course, four hours per credit hour. A particular course may not be taught or attended by a licensee for professional development credit more than once.

(C) For presentations of workshops or programs, three hours for each hour actually presented, for a maximum of six hours per year. A particular workshop or presentation topic may not be utilized for professional development credit more than once.

(D) For publications, eight hours for authoring or co-authoring a book; six hours for editing a book; four hours for authoring a published article or book chapter. A maximum credit of eight hours for publication is permitted for any one year.

(5) Professional development hours must have been obtained during the 24 month [~~12 months prior to the~~] renewal period for which they are submitted. If the hours were obtained during the license renewal month and are not needed for compliance for that renewal period, [~~year,~~] they may be submitted the following renewal period [~~year~~] to meet that period's [~~year's~~] professional development requirements. A professional development certificate may not be considered towards fulfilling the requirements for more than one renewal period [~~year~~].

(d) Documentation. It is the responsibility of each licensee to maintain documentation of all professional development hours claimed under this rule and to provide this documentation upon request by the Board. Licensees shall maintain documentation of all professional development hours claimed for at least five years. The Board will accept as documentation of professional development:

(1) for hours received from attendance or participation in formal professional development activities, a certificate or other document containing the name of the sponsoring organization, the title of the activity, the number of pre-assigned professional development hours for the activity, and the name of the licensee claiming the hours;

(2) for hours received from attending college or university courses, official grade slips or transcripts issued by the institution of higher education must be submitted;

(3) for hours received for teaching college or university courses, documentation demonstrating that the licensee taught the course must be submitted;

(4) for presenters of professional development workshops or programs, copies of the official program announcement naming the licensee as a presenter and an outline or syllabus of the contents of the program or workshop;

(5) for authors or editors of publications, a copy of the article or table of contents or title page bearing the name of licensee as the author or editor;

(6) for online or self-study courses, a copy of the certificate of completion containing the name of the sponsoring organization, the title of the course, the number of pre-assigned professional development hours for the activity, and stating the licensee passed the examination given with the course.

(e) Electronic Declaration of Professional Development. [~~Declaration Form.~~] All licensees must declare, on or before their renewal date, the professional development being submitted for the current renewal period through the Board's online renewal system. [~~sign and submit a completed Professional Development Declaration Form for each year in which they are licensed by the Board specifying the professional development received for the preceding renewal period. Licensees wishing to renew their license must submit the declaration form with the annual renewal form and fee no later than the renewal date.~~] Licensees shall not submit documentation of professional development credits obtained unless requested to do so by the Board. [~~Licensees who are not audited pursuant to subsection (f) of this section and who are otherwise eligible may declare their professional development on the online license renewal form.~~]

(f) Audit. The Board conducts two types of audits. Licensees shall comply with all Board requests for documentation and infor-

mation concerning compliance with professional development and/or Board audits.

(1) Random audits. Each month, 10% of the licensees will be selected by an automated process for an audit of the licensee's compliance with the Board's professional development requirements. The Board will notify a licensee by mail of the audit. Upon receipt of an audit notification, a licensee must submit his or her professional development documentation through the Board's online renewal system, or by fax, email, or regular mail before a license will be renewed. [~~Upon receipt of an audit notification, licensees planning to renew their licenses must submit requested documentation of compliance to the Board with their annual renewal form no later than the renewal date of the license. A licensee who is audited may renew their license online provided that they submit the professional development documentation to the Board at least two weeks in advance of their online renewal so that it can be pre-approved. Licensees wishing to retire their licenses should submit the requested documentation no later than the renewal date of the license.~~]

(2) Individualized audits. The Board will also conduct audits of a specific licensee's compliance with its professional development requirements at any time that the Board determines that there are grounds to believe that a licensee has not complied with the requirements of this rule. Upon receipt of notification of an individualized audit, the licensee must submit all requested documentation within the time period specified in the notification.

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 June 4, 2019.

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

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**22 TAC §461.16**

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §461.16, Inaccurate and False Information in Licensure Application/Documentation and for Annual Licensure Renewal Application/Documentation.

Overview and Explanation of the Proposed Rule. The proposed amendment will more precisely define the prohibited conduct, improve the agency's ability to protect the public, and make the changes needed to comport with proposed rule §471.1 published in this edition of the *Texas Register.*

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

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

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

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

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

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

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

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

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

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

The Board specifically invites comments from the public on the issues of whether or not the proposed rule amendment will have an adverse economic effect on small businesses; if the proposed rule amendment 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

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

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

*§461.16. Filing of False or Misleading Information with the Board. ~~Inaccurate and False Information in Licensure Application/Documentation and for Annual Licensure Renewal Application/Documentation.~~*

(a) Applicants. Applicants are prohibited from providing misleading ~~inaccurate~~ or false information in their applications and required documentation for licensure. For an infraction of this type, the Board may agree to process the application pursuant to an eligibility order. For a serious infraction of this type that could lead to licensure of an unqualified person, the Board may deny licensure.

(b) Licensees. The Board will file a complaint against a licensee for false or misleading statements, information, or omissions made in connection with an application for licensure or renewal. ~~alleged errors in or falsification of an application for licensure or required documentation for licensure or of an annual renewal application and required renewal documentation, including professional development documentation.~~ For an infraction that led to the licensure or ~~annual~~ renewal of an unqualified person, the Board may revoke the license or deny any future ~~disallow~~ renewal of the license.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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**22 TAC §461.18**

The Texas State Board of Examiners of Psychologists proposes the repeal of rule §461.18, Minimum Data Set Requirement for Online Renewals. The proposed repeal will correspond with the proposal of amended rule §471.1 published in this edition of the *Texas Register.*

OVERVIEW AND EXPLANATION OF THE PROPOSED REPEAL. The proposed repeal is necessary because the substance of this rule has been incorporated into the proposed amendments to rule §471.1.

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

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to applicants and licensees because the corresponding proposed new rule, published elsewhere in this edition of the *Texas Register,* will provide greater clarity and consistency in the Board's rules, as well as reduce regulatory licensing burdens. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Board protect the public.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed repeal is in effect, the Board es-

timates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the repeal's applicability; and it does not positively or adversely affect the state's economy.

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

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

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses. If the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; 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 repeal 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

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

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

*§461.18. Minimum Data Set Requirement for Online Renewals.*

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 June 4, 2019.

TRD-201901663
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 21, 2019
For further information, please call: (512) 305-7700

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## CHAPTER 463. APPLICATIONS AND EXAMINATIONS

### 22 TAC §463.11

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §463.11, Licensed Psychologists.

Overview and Explanation of the Proposed Rule Amendment. The proposed amendment is necessary to reduce unnecessary regulatory burdens on applicants, particularly those who delay entering the workforce.

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

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be a benefit to licensees and applicants because the proposed rule amendment will provide greater clarity in the Board's rules and will shorten the application process for some applicants. Currently, applicants with a gap greater than two years between the date an applicant obtains his or her doctoral degree and the date the applicant begins his or her required post-doctoral supervised experience will have their application denied unless the applicant can demonstrate good cause, as defined in the rule. This proposed amendment would increase this gap period to seven years. The Board meets on a quarterly basis so requesting a waiver can sometimes be a lengthy process; it could take as much as 90 days before the Board could meet, consider, and possibly grant or deny such a waiver. Therefore, future applicants with gaps of seven years or less will no longer be required to request a waiver from the Board; the Board's staff will be allowed to continue processing such applications without the need for any further Board action. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

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

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

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

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule amendment will have no impact on local employment or a local economy. Thus, the Board is not re-

quired to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

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

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

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

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

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

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

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

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

*§463.11. Licensed Psychologists.*

(a) Application Requirements. An application for licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5(1) of this title (relating to Application File Requirements):

(1) Documentation of active licensure as a provisionally licensed psychologist in good standing.

(2) Documentation of supervised experience from a licensed psychologist which satisfies the requirements of the Board. The formal internship should be documented by the Director of Internship Training when possible, but may be documented by a licensed psychologist with knowledge of the internship program and the applicant's participation in the internship program if the Director of Internship Training is unavailable.

(3) Documentation of licensure in other jurisdictions, including information on disciplinary action and pending complaints, sent directly to the Board.

(b) Degree Requirements. The degree requirements for licensure as a psychologist are the same as for provisional licensure as stated in Board rule §463.10 of this title (relating to Provisionally Licensed Psychologist).

(c) An applicant who is actively licensed as a psychologist in another jurisdiction, and who meets each of the following requirements, is considered to have met the requirements for supervised experience under this rule:

(1) The applicant must affirm that he or she has received at least 3,000 hours of supervised experience from a licensed psychologist in the jurisdiction where the supervision took place. At least half of those hours (a minimum of 1,500 hours) must have been completed within a formal internship, and the remaining one-half (a minimum of 1,500 hours) must have been completed after the doctoral degree was conferred or completed; and

(2) The applicant must submit a self-query report from the National Practitioner Data Bank (NPDB) reflecting no disciplinary history, other than disciplinary history related to continuing education or professional development. The report must be submitted with the application in the sealed envelope in which it was received from the NPDB.

(d) Supervised Experience. In order to qualify for licensure, an applicant must submit proof of a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have been received after obtaining either provisional trainee status or provisional licensure, and at least 1,750 of which must have been obtained through a formal internship that occurred within the applicant's doctoral degree program. A formal internship completed after the doctoral degree was conferred, but otherwise meeting the requirements of this rule, will be accepted for an applicant who received his or her doctoral degree prior to September 1, 2017. Following the conferral of a doctoral degree, 1,750 hours obtained or completed while employed in the delivery of psychological services in an exempt setting; while licensed or authorized to practice in another jurisdiction; or while practicing as a psychological associate or specialist in school psychology in this state may be substituted for the minimum of 1,750 hours of supervised experience required as a provisional trainee or provisionally licensed psychologist if the experi-

ence was obtained or completed under the supervision of a licensed psychologist. Post-doctoral supervised experience obtained prior to September 1, 2016 may also be used to satisfy, either in whole or in part, the post-doctoral supervised experience required by this subsection if the experience was obtained under the supervision of a licensed psychologist.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Each period of supervised experience must be obtained in not more than two placements, and in not more than 24 consecutive months.

(B) Gaps Related to Supervised Experience.

*(i)* Unless a waiver is granted by the Board, an application for a psychologist's license will be denied if:

*(I)* a gap of more than seven years exists between the date an applicant's doctoral degree was officially conferred and the date the applicant began obtaining his or her hours of supervised experience under provisional trainee status or provisional licensure; or

*(II)* a gap of more than two years exists between the completion date of an applicant's hours of supervised experience acquired as a provisional trainee or provisionally licensed psychologist, and the date of application.

~~*[(i)* Unless a waiver is granted by the Board, an application for a psychologist's license will be denied if a gap of more than 2 years exists between:~~

~~*[(I)* the date an applicant's doctoral degree was officially conferred and the date the applicant began obtaining their hours of supervised experience under provisional trainee status or provisional licensure; or~~

~~*[(II)* the completion date of an applicant's hours of supervised experience acquired as a provisional trainee or provisionally licensed psychologist, and the date of application.~~

*(ii)* The Board shall grant a waiver upon a showing of good cause by the applicant. Good cause shall include, but is not limited to:

*(I)* proof of continued employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Act, during any gap period;

*(II)* proof of annual professional development, which at a minimum meets the Board's professional development requirements, during any gap period;

*(III)* proof of enrollment in a course of study in a regionally accredited institution or training facility designed to prepare the individual for the profession of psychology during any gap period; or

*(IV)* proof of licensure as a psychologist and continued employment in the delivery of psychological services in another jurisdiction.

(C) A formal internship with rotations, or one that is part of a consortium within a doctoral program, is considered to be one placement. A consortium is composed of multiple placements that have entered into a written agreement setting forth the responsibilities and financial commitments of each participating member, for the purpose of offering a well-rounded, unified psychology training program whereby trainees work at multiple sites, but obtain training from one primary site with some experience at or exposure to aspects of the other sites that the primary site does not offer.

(D) The supervised experience required by this rule must be obtained after official enrollment in a doctoral program.

(E) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(F) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(G) Experience obtained from a psychologist who is related within the second degree of affinity or consanguinity to the supervisee may not be utilized to satisfy the requirements of this rule.

(H) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.

(I) Unless authorized by the Board, supervised experience received from a psychologist practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(J) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a Provisionally Licensed Psychologist or a Licensed Psychological Associate may use his or her title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a Licensed Specialist in School Psychology may use his or her title so long as the supervised experience takes place within a school, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if authorized under §501.004 of the Psychologists' Licensing Act, or another Board rule.

(2) Formal Internship. The formal internship hours must be satisfied by one of the following types of formal internships:

(A) The successful completion of an internship program accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC); or

(B) The successful completion of an organized internship meeting all of the following criteria:

*(i)* It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

*(ii)* The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

*(iii)* The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

*(iv)* Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

*(v)* The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

*(vi)* At least 25% of trainee's time must be in direct patient/client contact.

*(vii)* The internship must include a minimum of two hours per week of regularly scheduled formal, face-to-face individual supervision. There must also be at least four additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

*(viii)* Training must be post-clerkship, post-practicum and post-externship level.

*(ix)* The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

*(x)* The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work, including expected competencies; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

*(i)* The internship experience must be provided at or near the end of the formal training period.

*(ii)* The internship experience must require a minimum of 35 hours per week over a period of one academic year, or a minimum of 20 hours per week over a period of two consecutive academic years.

*(iii)* The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

*(iv)* The internship experience must occur in a setting appropriate to the specific training objectives of the program.

*(v)* At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

*(vi)* The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

*(vii)* Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

*(viii)* Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

*(ix)* The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

*(x)* The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

*(xi)* The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

*(xii)* The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

*(xiii)* The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete 3,500 hours of supervised experience meeting the requirements of paragraph (1) of this subsection, at least 1,750 of which must have been received as a provisional trainee or provisionally licensed psychologist. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(4) Licensure Following Retraining.

(A) In order to qualify for licensure after undergoing retraining, an applicant must demonstrate the following:

*(i)* conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to undergoing retraining;

*(ii)* completion of a formal, accredited post-doctoral retraining program in psychology which included at least 1,750 hours in a formal internship;

*(iii)* retraining within the two year period preceding the date of application for licensure under this rule, or continuous employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act since receiving their doctoral degree; and

*(iv)* upon completion of the retraining program, at least 1,750 hours of supervised experience after obtaining either provisional trainee status or provisional licensure.

(B) An applicant meeting the requirements of this subsection is considered to have met the requirements for supervised experience under this rule.

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 June 4, 2019.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 21, 2019
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## CHAPTER 471. RENEWALS

**22 TAC §471.1**

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §471.1, Renewal of a License.

Overview and Explanation of the Proposed Rule. The proposed amendment will reduce the regulatory burden on licensees and improve agency efficiency by requiring biennial renewals and increasing the level of automation used in carrying out agency functions. Moreover, the proposed amendment will advance the Board's stated goal of expanding its use of digital services, a key component in the agency's strategic plan. Additionally, the proposed amendment is necessary due to anticipated statutory changes to §501.301 and §501.302 of the Tex. Occ. Code and newly anticipated §507.254 of the Tex. Occ. Code, as proposed in Tex. H.B. 1501 and S.B. 611, 86th Leg., R.S. (2019).

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

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

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

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

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

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

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

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

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

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

The Board specifically invites comments from the public on the issues of whether or not the proposed rule amendment will have an adverse economic effect on small businesses. If the proposed rule amendment 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

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

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

*§471.1. Renewal of a License.*

(a) All licenses issued by the Board shall be subject to annual renewal through August 31, 2019. Effective September 1, 2019, all licenses issued by this agency are renewable on a biennial basis and must be renewed online.

(b) Renewals [~~Annual renewals~~] are due on the last day of the license holder's birth month, but may be completed up to 60 days in advance.

(c) Licensees must pay all applicable renewal and late fees, indicate compliance with the professional development requirements set out in Board rule §461.11 of this title (relating to Professional Development), provide a standardized set of information about their training and practices or update this information prior to renewal, and comply with any other requirements set out in agency renewal forms as a prerequisite for renewal of a license. Licensed psychologists must also update their online profile information when renewing their license. A license may not be renewed until a licensee has complied with the requirements of this rule.

(d) A licensee who falsely reports compliance with Board rule §461.11 of this title on his or her renewal form or who practices with a license renewed under false pretenses will be subject to disciplinary action.

(e) Licensees will be sent notification of their approaching renewal date at least 30, but not more than 90 days before their renewal date. This notification will be sent to the licensee's address of record via first class mail. Responsibility for renewing a license rests exclusively with the licensee, and the failure of the licensee to receive the reminder notification from the Board shall not operate to excuse a licensee's failure to timely renew a license. Licensees who do not timely renew their license will be sent a second notice informing them that their license has become delinquent. The second notice will be sent to the licensee's address of record via certified or register mail. Failure of a licensee to receive the second notification shall not operate to excuse the failure to timely renew a license or any unlawful practice with a delinquent license. [~~Each year licensees will be sent notification of their approaching renewal date at least 30 days before the last day of their birth month.~~]

(f) Notwithstanding subsection (a) of this section, effective September 1, 2019 one-half of the individuals licensed by this agency will be selected and required to renew their license(s) on a one-time basis for one year, after which their renewal period will be automatically converted to the biennial renewal period. The renewal fee for a license renewed under this subsection shall be one-half of the biennial renewal fee for the particular license, together with the appropriate Office of Patient Protection and Texas.gov subscription fees. The professional development requirements for a license renewed under this subsection shall also be reduced to one-half of the professional development requirements under Board rule §461.11 of this title.

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 June 4, 2019.

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

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**22 TAC §471.2**

The Texas State Board of Examiners of Psychologists proposes the repeal of rule §471.2, Renewal Forms. The proposed repeal will correspond with the proposal of amended rule §471.1 published in this edition of the *Texas Register.*

OVERVIEW AND EXPLANATION OF THE PROPOSED REPEAL. The proposed repeal is necessary because portions of this rule have been incorporated into the proposed amendments to rule §471.1, and because the remaining substance of this rule is duplicative of the existing requirements found in rule §471.1.

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

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to applicants and licensees because the corresponding proposed new rule, published elsewhere in this edition of the *Texas Register,* will provide greater clarity and consistency in the Board's rules, as well as reduce regulatory licensing burdens. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Board protect the public.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed repeal is in effect, the Board es-

timates that the proposed repeal will have no effect on government growth. The proposed repeal does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the repeal's applicability; and it does not positively or adversely affect the state's economy.

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

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

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses. If the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; 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 repeal 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

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

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

*§471.2. Renewal Forms.*

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 June 4, 2019.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 21, 2019
For further information, please call: (512) 305-7700

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**22 TAC §471.3**

The Texas State Board of Examiners of Psychologists proposes new rule §471.3, Initial License Renewal Dates.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. The proposed new rule is necessary to comport with the changes set out in proposed rule §471.1, published in this edition of the *Texas Register,* which would create a biennial license renewal requirement instead of the current annual one. This proposed new rule is necessary to define the expiration date for newly issued and reinstated licenses in the proposed biennial license renewal structure.

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

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

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

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

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

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

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

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does create a new regulation but the proposed new rule essentially clarifies the biennial renewal regulatory structure, which is proposed in rule §471.1 published in this addition of the *Texas Register,* reducing the current regulatory burdens imposed by the annual renewal requirements; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

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

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

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

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

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

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

*§471.3. Initial License Renewal Dates.*

(a) The license expiration date for a license issued by this agency is the last day of the licensee's birth month.

(b) The initial renewal date for a license issued or reinstated by this agency shall be set as follows:

(1) A license issued or reinstated within 180 days prior to the last day of a licensee's birth month shall be set for renewal on the next expiration date following a period of two years from the date of issuance or reinstatement.

(2) A license issued or reinstated more than 180 days prior to the last day of a licensee's birth month shall be set for renewal on the next expiration date following a period of one year from the date of issuance or reinstatement.

(c) Following the initial renewal dates set forth in subsection (b) of this section, a license shall become subject to the standard renewal schedule and requirements.

(d) Notwithstanding subsection (b) of this section, for individuals with more than one license, the initial renewal date for a newly issued or reinstated license shall coincide with the individual's existing license renewal date.

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 June 4, 2019.

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

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**22 TAC §471.6**

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §471.6, Renewal Terms Exclusive to Licensees on Active Military Duty.

Overview and Explanation of the Proposed Rule. The proposed amendment is necessary to comport with the changes set out in proposed rule §471.1 published in this edition of the *Texas Register.*

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

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

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

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year pe-

riod the proposed rule amendment is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

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

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

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

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

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

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

The Board specifically invites comments from the public on the issues of whether or not the proposed rule amendment will have an adverse economic effect on small businesses. If the proposed rule amendment 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

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

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

*§471.6. Renewal Terms Exclusive to Licensees on Active Military Duty.*

(a) Licensees serving on active duty, as defined by Tex. Occ. Code Ann. §55.001, may request a waiver from the professional development requirements and renewal fees associated with the renewal of their license. Licensees who submit a written request to the Board prior to their renewal date each renewal period [~~year~~], and provide the Board with official verification of active duty status during their renewal period [~~year~~], will be granted a waiver from the professional development requirements and renewal fees associated with the renewal of their license for that renewal period. [~~year~~]

(b) Licensees with an expired or delinquent license may request their license be reinstated or returned to active status if they would have been eligible for a waiver under subsection (a) of this section ~~above~~ prior to their license expiring or becoming delinquent. Licensees seeking relief under this subsection ~~paragraph~~ must do so within two years of their license becoming delinquent.

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 June 4, 2019.

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

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## CHAPTER 473. FEES

### 22 TAC §473.1

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §473.1, Application Fees.

Overview and Explanation of the Proposed Rule. The proposed amendment is necessary to comply with §501.152 of the Psychologists' Licensing Act, as well as newly anticipated §507.154 of the Occupations Code as proposed in Tex. H.B. 1501 and S.B. 611, 86th Leg., R.S. (2019). Currently, once an applicant becomes licensed, he or she renews his or her license after one year. Once the agency converts to biennial renewals, however, the agency would lose the revenue generated from that first year renewal because the initial renewal date would be set between

18 and 30 months out from the date of licensure. Because this revenue is necessary for the agency to carry out its mission, the agency must recover this lost revenue through other means. Therefore, the agency proposes recovering this lost revenue by adding an amount equal to the annual renewal fee for a license to the application fee for that license. This would ensure the agency continues to collect the same amount of revenue without increasing the fees actually paid by applicants or licensees.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Although the proposed amendment will increase the fee for an application, the amount collected will be offset by the fees collected when renewing a license. The Board is proposing a change to §471.1, published in this addition of the *Texas Register,* which will require licensees to renew bi-annually instead of annually. The fee that would have been collected after the first year of licensure is being included into the application fee. Therefore the net result is expected to be the same, or of a nominal difference, when compared to the current regulatory structure. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

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

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule amendment is in effect, there will be no additional economic costs to persons required to comply with this rule. Although the proposed amendment will increase the fee for an application, the amount charged will be offset by the amount charged when renewing a license. As previously discussed, the Board is proposing a change to §471.1 which will require licensees to renew bi-annually instead of annually, reducing the regulatory burden on licensees. The fee that would have been charged for a renewal after the first year of licensure is being included into the application fee. Therefore, the net result of costs for applicants is expected to be the same as the current regulatory structure.

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

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

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

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

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

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

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

The Board specifically invites comments from the public on the issues of whether or not the proposed rule amendment will have an adverse economic effect on small businesses. If the proposed rule amendment 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

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

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

*§473.1. Application Fees [(Not Refundable)].*

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

(1) Licensed Psychological Associate: $300 [Psychological Associate Licensure--$190]

(2) Provisionally Licensed Psychologist: $445 [--$340]

(3) Licensed Psychologist: $381 [Licensure--$180]

(4) [(5)] Licensed Specialist in School Psychology: $275[--$220]

[(4) Reciprocity--$480]

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

(c) In addition to the application fees set forth above, applicants must also pay a $5 Office of Patient Protection fee for each application submitted.

(d) Application fees are nonrefundable and cannot be waived except as otherwise stated herein.

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

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

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

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

Filed with the Office of the Secretary of State on June 4, 2019.

TRD-201901669
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 21, 2019
For further information, please call: (512) 305-7700

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**22 TAC §473.3**

The Texas State Board of Examiners of Psychologists proposes the repeal of rule §473.3, Annual Renewal Fees (Not Refundable). The proposed repeal will correspond with the proposal of a new rule §473.3 published in this edition of the *Texas Register.*

Overview and Explanation of the Proposed Repeal. The proposed repeal, in conjunction with the proposed new rule §473.3, is necessary to comport with the changes set out in proposed rule §471.1, published in this issue of the *Texas Register,* and changes in fees set by outside agencies.

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

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed repeal is in effect there will be a benefit to applicants and licensees because the corresponding proposed new rule, published elsewhere in this issue of the *Texas Register,* will provide greater clarity and consistency in the Board's rules, as well as reduce regulatory licensing burdens. Mr. Spinks has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to help the Board protect the public.

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

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

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

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

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

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

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

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

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses. If the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; 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 repeal 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

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

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

*§473.3. Annual Renewal Fees (Not Refundable).*

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 June 4, 2019.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 21, 2019
For further information, please call: (512) 305-7700

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**22 TAC §473.3**

The Texas State Board of Examiners of Psychologists proposes new rule §473.3, Biennial Renewal Fees (Not Refundable).

Overview and Explanation of the Proposed Rule. The proposed new rule is necessary to comport with the changes set out in proposed rule §471.1, published in this addition of the *Texas Register,* and changes in fees set by outside agencies.

Fiscal Note. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Although the proposed new rule will increase the fee for renewing a license, by essentially doubling the charge, the period of time the license is renewed has been doubled so the net result is expected to the be the same, or of a nominal difference, when compared to the current regulatory structure. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants and licensees because the proposed rule will provide greater clarity and consistency in the Board's rules, as well as reducing the regulatory licensing burdens by allowing for biennial renewals instead of the currently required annual renewals. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule. Although the proposed new rule will increase the fee for a renewal, by approximately double the fee, the period of time the license is renewed for will be doubled; therefore the probable economic costs are expected to be the same as under the current regulatory structure. Additionally, charges from other government agencies are included in this rule which are expected to have a nominal impact of as much as $6.00 to as little as $3.00 on licensees renewing every two years. Even with these nominal fees included, Mr. Spinks has determined that the net result of costs for licensees is expected to be the same as the current regulatory structure or even less. For example, the current cost of a psychologist licensure renewal is $212.00 but under the new rule it would be $412.00 plus a possible $6.00 in fees; the total under the new rule would be $6.00 less than under the current rule.

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

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

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

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or

amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Board on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Board estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to the agency; it does not require an increase or decrease in fees paid to the agency; it does create a new regulation, since it is a new rule, but the proposed new rule essentially uses the same existing regulation and reduces the regulatory burden on licensees by requiring biennial licensure renewals instead of annual renewals; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

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

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

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

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

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

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

*§473.3. Biennial Renewal Fees (Not Refundable).*

(a) Biennial License Renewal Fees:

(1) Licensed Psychological Associate: $230;

(2) Provisionally Licensed Psychologist: $220;

(3) Licensed Psychologist: $412; and

(4) Licensed Specialist in School Psychology: $120.

(b) Notwithstanding subsection (a) of this section, the license renewal fee is $20 for an individual 70 years of age or older, regardless of the type of license held.

(c) The renewal fee for the Psychologist Health Service Provider status issued by this agency is $40.

(d) In addition to the renewal fees set forth above, licensees must also pay the following fees in connection with the renewal of a license:

(1) A $1 Office of Patient Protection fee for each year in the renewal period; and

(2) A Texas.gov subscription fee for each year in the renewal period in the following amount(s):

(A) $5 per license for psychologists;

(B) $3 per license for provisionally licensed psychologists and licensed psychological associates; and

(C) $2 per license for licensed specialist in school psychology.

(e) Notwithstanding subsection (d) of this section, licensees 70 years of age and older must pay a $2 Texas.gov subscription fee per license, regardless of the license type.

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 June 4, 2019.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 21, 2019
For further information, please call: (512) 305-7700

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**22 TAC §473.4**

The Texas State Board of Examiners of Psychologists proposes the repeal of rule §473.4, Late Fees for Renewals (Not Refundable). The proposed repeal will correspond with the proposal of a new rule §473.4 published in this issue of the *Texas Register.*

Overview and Explanation of the Proposed Repeal. The proposed repeal is necessary due to anticipated statutory changes to §501.302 of the Psychologists' Licensing Act and newly anticipated §507.254 of the Occupations Code, as proposed in Tex. H.B. 1501 and S.B. 611, 86th Leg., R.S. (2019).

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

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

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

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

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

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

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

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

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

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

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses. If the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; 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 repeal 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

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

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

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

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 June 4, 2019.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: July 21, 2019
For further information, please call: (512) 305-7700

**22 TAC §473.4**

The Texas State Board of Examiners of Psychologists proposes new rule §473.4, Late Fees for Renewals.

Overview and Explanation of the Proposed Rule. The proposed new rule is necessary due to anticipated statutory changes to §501.302 of the Psychologists' Licensing Act and newly anticipated §507.254 of the Occupations Code, as proposed in Tex. H.B. 1501 and S.B. 611, 86th Leg., R.S. (2019).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*§473.4. Late Fees for Renewals.*

(a) For a license expired ninety days or less, a licensee must pay a late fee in an amount equal to one and one-half times the required renewal fee.

(b) For a license expired more than ninety days but less than one year, a licensee must pay a late fee in an amount equal to two times the required renewal fee.

(c) Late renewal fees are nonrefundable and cannot be waived.

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

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

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**22 TAC §473.5**

The Texas State Board of Examiners of Psychologists proposes an amendment to rule §473.5, Miscellaneous Fees (Not Refundable).

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. The proposed amendment is necessary to comport with the changes set out in proposed rule §461.7, published elsewhere in this edition of the *Texas Register.*

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Board, has determined that for the first five-year period the

proposed rule amendment is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

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

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

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

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

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

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

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

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

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

The Board specifically invites comments from the public on the issues of whether or not the proposed rule amendment will have an adverse economic effect on small businesses. If the proposed rule amendment 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 §2006.002(c) and (c-1) of the Tex. Gov't Code.

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

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

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

*§473.5. Miscellaneous Fees (Not Refundable).*

(a) Duplicate or Replacement Calligraphy License--$25.

(b) Inactive Status [~~(two-year period)~~]--$100.

(c) Remailing of License--$10.

(d) Returned Check Fee--$25.

[~~(e) Returned Renewal Application Fee--$10.~~]

(e) [~~(f)~~] Analysis of Jurisprudence Examination--$50.

(f) [~~(g)~~] Cost of Duplicate or Replacement ~~annual~~ renewal permit--$10.

(g) [~~(h)~~] Limited Temporary License--$100.

(h) [~~(i)~~] Preliminary Evaluation of Eligibility for Licensure of Person with Criminal Record--$150.

(i) [~~(j)~~] Written Verification of License:

(1) Without State Seal--$30.

(2) With State Seal--$50.

(j) [~~(k)~~] Mailing List--$100.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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# TITLE 34. PUBLIC FINANCE

## PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

### CHAPTER 3. TAX ADMINISTRATION
### SUBCHAPTER V. FRANCHISE TAX

**34 TAC §3.584**

The Comptroller of Public Accounts proposes amendments to §3.584, concerning margin: reports and payments. The amendments memorialize the comptroller's application of the language in Tax Code, §171.002(c) (Rates; Computation of Tax) that determines whether an entity is primarily engaged in retail or wholesale trade; implement provisions in House Bill 2126, 85th Legislature, 2017, related to the sale of prepaid telephone calling cards and whether an entity is primarily engaged in retail or wholesale trade; implement provisions in Senate Bill 1095, 85th Legislature, 2017, related to when a determination and a decision on a petition for redetermination are final; remove language addressing the 2008 transition to the "margin" tax base, which is no longer relevant due to the passage of time; and correct a typographical error.

The comptroller amends subsection (b) to revise the definition of "primarily engaged in retail or wholesale trade" and to add definitions of the terms "produce" and "product," which appear in Tax Code, §171.002(c), but are not defined.

The comptroller amends subsection (b)(2), defining "primarily engaged in retail or wholesale trade," to more closely track the language of Tax Code, §171.002(c-1), concerning eating and drinking places.

The comptroller also amends subsection (b)(2) to remove language addressing when activities to modify a product are not considered "production." The comptroller incorporates this safe harbor provision into the definition of "produce" in new subsection (b)(3).

The comptroller further amends subsection (b)(2) to incorporate language from House Bill 2126. House Bill 2126 amends Tax Code, §171.002, which states that a taxable entity primarily engaged in retail or wholesale trade is ineligible for a reduced rate if it provides retail or wholesale utilities, including telecommunications services. House Bill 2126 states that, for the limited purpose of section 171.002, selling prepaid telephone calling cards is not considered to be providing telecommunications services. Although House Bill 2126 applies only to reports originally due on or after January 1, 2018, the comptroller is not proposing a separate effective date for the incorporated language because the comptroller had been interpreting section 171.002 consistent with the language of House Bill 2126 prior to its effective date. Accordingly, as provided in subsection (a), the incorporated language applies to all franchise tax reports originally due on or after January 1, 2008. Neither House Bill 2126, nor this proposed rule amendment affect Comptroller's Decision Nos. 111,864 - 111,869 (2016), which states that for apportionment purposes, the receipts from the sale of a telephone prepaid calling card are receipts from the sale or resale of a telecommunication service.

The comptroller amends subsection (b)(3) by adding the definition of "produce." The comptroller derives the definition of "produce" from the definition of "production" in Tax Code, §171.1012 (Determination of Cost of Goods Sold). The Legislature adopted Tax Code, §171.1012 and §171.002 in the same legislative act, Acts 2006, 79th Leg., 3rd C.S., ch. 1, sec. 2 and 5, eff. January 1, 2008. Therefore, the comptroller interprets these sections in the same manner. A taxable entity cannot claim the cost-of-goods-sold deduction on goods that it "produces," while simultaneously claiming it does not "produce" the same goods for purposes of determining qualification for the reduced rate.

Subparagraph (A) identifies activities that constitute production. The subparagraph makes clear that a taxable entity that asserts a software copyright or patent right on a product or component of a product, produces the product. The subparagraph also provides that a taxable entity that produces a component of the product, or acquires the product and makes a modification to the product, produces the product unless the safe harbor for de minimis production activities applies. The safe harbor, currently provided in the definition of "primarily engaged in retail or wholesale trade," is incorporated in this subparagraph and expanded to include the production of component parts. The comptroller now specifically places the burden on the taxable entity to show these de minimis production activities do not increase the sales price of the product by more than 10 percent.

Subparagraph (B) provides that, unless subparagraph (A) applies, a taxable entity that outsources the manufacture of generic products to a third-party manufacturer is not engaged in production.

The comptroller will apply the revisions to subsection (b)(3) prospectively to the extent that the revisions may be inconsistent with prior comptroller interpretations.

The comptroller proposes a definition of "product" as new subsection (b)(4). The comptroller derives the proposed definition from the definitions of "goods" and "tangible personal property" in Tax Code, §171.1012. The comptroller purposefully omits "real property" from the definition of "product" for purposes of this section, although the definition of "goods" in Tax Code, §171.1012, includes both tangible personal property and real property. The sale of real property is not an activity described in Division F (Wholesale Trade) or G (Retail Trade) of the Standard Industrial Classification Manual; therefore, the sale of real property is not a factor in determining if an entity is primarily engaged in retail or wholesale trade. The comptroller renumbers subsequent paragraphs accordingly.

The comptroller amends renumbered subsection (b)(8) defining "unrelated party" to provide that the relationship between the parties at the time of a relevant transaction controls the determination.

The comptroller amends subsection (c)(5)(A) to correct a typographical error in the reference to §3.585 of this title (relating to Margin: Annual Report Extension).

The comptroller removes subsection (c)(6), which addresses the transition from using taxable capital and earned surplus as the basis for calculating the franchise tax to calculating the franchise tax based on taxable margin, and references §3.595 of this title (relating to Margin: Transition). The franchise tax report due in 2008, the year of transition, is now outside the four-year statute of limitations for assessments and refund claims, and the comptroller has repealed §3.595. The comptroller renumbers subsequent paragraphs accordingly.

The comptroller amends subsection (e)(3), regarding penalty and interest on delinquent taxes, to implement Senate Bill 1095. Senate Bill 1095 extends the amount of time a taxpayer has to file a petition for redetermination and also changes the date a decision on a petition for redetermination becomes final.

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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by updating the rule to more clearly state comptroller interpretation of statute and to reflect statutory changes enacted by the 85th Legislature. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendment implements Tax Code, §171.002 (Rates; Computation of Tax).

*§3.584. Margin: Reports and Payments.*

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

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

(1) Beginning date--

(A) except as provided by subparagraph (B) of this paragraph:

*(i)* for a taxable entity chartered or organized in this state, the date on which the taxable entity's charter or organization takes effect; and

*(ii)* for a foreign taxable entity, the date on which the taxable entity begins doing business in this state; or

(B) for a taxable entity that qualifies as a new veteran-owned business, as defined in §3.574 of this title (relating to Margin: New Veteran-Owned Businesses), the earlier of:

*(i)* the fifth anniversary of the date on which the taxable entity was chartered, organized, or otherwise formed in Texas; or

*(ii)* the date the taxable entity ceases to qualify as a new veteran-owned business.

(2) Primarily engaged in retail or wholesale trade--A taxable entity is primarily engaged in retail or wholesale trade only if:

(A) the total revenue from the taxable entity's activities in retail and wholesale trade is greater than the total revenue from its activities in trades other than retail and wholesale trade;

(B) less than 50% of the total revenue from the taxable entity's activities in retail or wholesale trade comes from the sale of products the taxable entity produces or products produced by an entity that is part of an affiliated group to which the taxable entity also belongs, except for total revenue from activities in a retail trade described by [~~those businesses under SIC Manual,~~] Major Group 58 (Eating and Drinking Places) of the SIC Manual[~~. A product is not considered to be produced if modifications made to the acquired product do not increase its sales price by more than 10%~~]; and

(C) the taxable entity does not provide retail or wholesale utilities, including telecommunications services, electricity, or gas. For purposes of this subparagraph, selling telephone prepaid calling cards is not providing telecommunications services.

(3) Produce--To construct, manufacture, install during the manufacturing or construction process, develop, mine, extract, improve, create, raise, or grow either a product or a component of a product.

(A) A taxable entity produces a product that it sells if the taxable entity or an entity that is part of an affiliated group to which the taxable entity also belongs:

*(i)* asserts a software copyright on the product or a component of the product;

*(ii)* asserts a patent right under Title 35 of the United States Code or comparable law of any other foreign jurisdiction with respect to the product, a component of the product, or the packaging of the product; or

*(iii)* produces a component of the product, or acquires the product and makes a modification to the product, unless the taxable entity can demonstrate that the component or modification does not increase the sales price of the product by more than 10%.

(B) Except as provided in subparagraph (A) of this paragraph, a taxable entity does not produce a product that it sells if an unrelated party manufactures the product and all components of the product to the taxable entity's specifications.

(4) Product--Tangible personal property acquired or produced for sale.

(A) Tangible personal property--

*(i)* personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner;

*(ii)* films, sound recordings, videotapes, live and prerecorded television and radio programs, books, and other similar

property embodying words, ideas, concepts, images, or sound, without regard to the means or methods of distribution or the medium in which the property is embodied, for which, as costs are incurred in producing the property, it is intended or is reasonably likely that any medium in which the property is embodied will be mass-distributed by the creator or any one or more third parties in a form that is not substantially altered; and

*(iii)* a computer program, as defined by Tax Code, §151.0031 ("Computer Program").

(B) Tangible personal property does not include:

*(i)* intangible property; or

*(ii)* services.

(5) [~~(3)~~] Retail trade--

(A) for reports originally due on or after January 1, 2008, and before January 1, 2012, the activities described in Division G of the SIC Manual;

(B) for reports originally due on or after January 1, 2012, and before January 1, 2014:

*(i)* the activities described in Division G of the SIC Manual; and

*(ii)* apparel rental activities classified as Industry 5999 or 7299 of the SIC Manual; and

(C) for reports originally due on or after January 1, 2014:

*(i)* the activities described in Division G of the SIC Manual;

*(ii)* apparel rental activities classified as Industry 5999 or 7299 of the SIC Manual;

*(iii)* the activities classified as Automotive Repair Shops, Industry Group 753 of the SIC Manual;

*(iv)* rental-purchase agreement activities regulated by Business & Commerce Code, Chapter 92;

*(v)* rental or leasing of tools, party and event supplies, and furniture, classified as Industry 7359 of the SIC Manual; and

*(vi)* heavy construction equipment rental or leasing activities, classified as Industry 7353 of the SIC Manual.

(6) [~~(4)~~] SIC Manual--The 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(7) [~~(5)~~] Wholesale trade--The activities described in Division F of the SIC Manual.

(8) [~~(6)~~] Unrelated party--With respect to a taxable entity, an entity that for any period during which the entity does not meet the requirements to be a member [~~is not part~~] of the same affiliated group, as defined in §3.590(b)(1) of this title (relating to Margin: Combined Reporting), as such taxable entity.

(c) Reports and due dates.

(1) Initial report. For taxable entities with a beginning date prior to October 4, 2009, both the initial report and payment of the tax due, if any, are due no later than 89 days after the first anniversary date of the beginning date. The taxable margin computed on the initial report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report, or, if there is no such ending date, then ending on the day that is the last day of the calendar month nearest to the end of the taxable entity's first year of business. If the period used to compute business done for purposes of the initial report differs from the taxable entity's last accounting period for federal income tax purposes, then the taxable entity's total revenue for purposes of the initial report shall be computed as if the taxable entity had reported its federal taxable income on an Internal Revenue Service form covering the period used to compute business done for purposes of the initial report. The privilege period for the initial report is from the beginning date through December 31 of the year in which the initial report is originally due.

(2) First annual report. For taxable entities with a beginning date of October 4, 2009, or later, both the first annual report and payment of the tax due, if any, are due no later than May 15 of the year following the year the entity became subject to the tax (i.e., the beginning date). The taxable margin computed on the first annual report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is in the same calendar year as the beginning date. The privilege period for the first annual report is from the beginning date through December 31 of the year in which the first annual report is originally due.

(3) Annual report. The annual franchise tax report must be filed and the tax paid no later than May 15 of each year. The taxable margin computed on an annual report is based on the business done during the period beginning with the day after the last date upon which tax was computed under Tax Code, Chapter 171 on a previous report, and ending with the last accounting period ending date for federal income tax purposes ending in the calendar year before the calendar year in which the report is originally due, or, if there is no such ending date, then ending on December 31 of the calendar year before the calendar year in which the report is originally due. A taxable entity that uses a 52 - 53 week accounting year end and has an accounting year ending the first four days of January of the year in which the annual report is originally due may use the preceding December 31 as the date through which taxable margin is computed. If the period used to compute business done for purposes of the annual report differs from the taxable entity's last accounting period for federal income tax purposes, then the taxable entity's total revenue for purposes of the annual report shall be computed as if the taxable entity had reported its federal taxable income on an Internal Revenue Service form covering the period used to compute business done for purposes of the annual report. The privilege period for an annual report is January 1 through December 31 of the year in which the annual report is originally due.

(4) Final report. A final tax report and payment of the additional tax are due within 60 days after the taxable entity no longer has sufficient nexus with Texas to be subject to the franchise tax. See §3.592 of this title (relating to Margin: Additional Tax) for further information concerning the additional tax imposed by Tax Code, §171.0011.

(5) Extensions.

(A) Annual report. See §3.585 of this title (relating to Margin: Annual Report Extension [~~Extensions~~]), for extensions of time to file an annual report, including the first annual report.

(B) Final report. A taxable entity will be granted a 45-day extension of time to file a final report, if the taxable entity:

*(i)* requests the extension on or before the filing date;

*(ii)* requests the extension on a form provided by the comptroller; and

*(iii)* remits 90% or more of the tax reported as due on the final report.

~~[(6) Transition. See §3.595 of this title (relating to Margin: Transition) for transitional information concerning tax rates and privilege periods as a result of certain legislative changes.]~~

(6) [~~(7)~~] Nontaxable entities. See §3.581 of this title (relating to Margin: Taxable and Nontaxable Entities) for information concerning nontaxable entities. Except for passive entities (see §3.582 of this title (relating to Margin: Passive Entities)), a nontaxable entity that has not notified the comptroller or the secretary of state that it is doing business in Texas, or that has previously notified the comptroller that it is not taxable, must notify the comptroller in writing only when the entity no longer qualifies as a nontaxable entity. If an entity receives notification in writing from the comptroller asking for information to determine if the entity is a taxable entity, the entity must reply to the comptroller within 30 days of the notice.

(7) [~~(8)~~] Passive entities. See §3.582 of this title, for information concerning the reporting requirements for a passive entity.

(8) [~~(9)~~] Combined reporting. Taxable entities that are part of an affiliated group engaged in a unitary business must file a combined group report in lieu of individual reports, except that a public information report or ownership information report must be filed for each member of the combined group with nexus. See §3.590 of this title for rules on filing a combined report.

(9) [~~(10)~~] New veteran-owned businesses. See §3.574 of this title for information concerning the reporting requirements for a qualifying new veteran-owned business.

(10) [~~(11)~~] Date of filing. See §3.13 (relating to Postmarks, Timely Filing of Reports, and Timely Payment of Taxes and Fees) for information concerning the requirements for timely filing.

(11) [~~(12)~~] Receivership. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a taxable entity in receivership. A debtor in possession or the appointed trustee or receiver of a taxable entity in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax pursuant to the plan of reorganization or arrangement.

(d) Calculation of tax.

(1) Margin computation. A taxable entity's margin equals the least of the following calculations, if eligible:

(A) For reports originally due on or after January 1, 2008, and before January 1, 2014:

*(i)* total revenue minus cost of goods sold;

*(ii)* total revenue minus compensation; or

*(iii)* 70% of total revenue.

(B) For reports originally due on or after January 1, 2014:

*(i)* total revenue minus cost of goods sold;

*(ii)* total revenue minus compensation;

*(iii)* 70% of total revenue; or

*(iv)* total revenue minus $1 million.

(2) Rate. Except as provided by paragraph (6) of this subsection:

(A) For reports originally due on or after January 1, 2008, but before January 1, 2014:

*(i)* a tax rate of 1.0% of taxable margin applies to most taxable entities; and

*(ii)* a tax rate of 0.5% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(B) For reports originally due on or after January 1, 2014, but before January 1, 2015:

*(i)* a tax rate of 0.975% of taxable margin applies to most taxable entities; and

*(ii)* a tax rate of 0.4875% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(C) For reports originally due on or after January 1, 2015, but before January 1, 2016:

*(i)* a tax rate of 0.95% of taxable margin applies to most taxable entities; and

*(ii)* a tax rate of 0.475% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(D) For reports originally due on or after January 1, 2016:

*(i)* a tax rate of 0.75% of taxable margin applies to most taxable entities; and

*(ii)* a tax rate of 0.375% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(3) Annualized Total Revenue. When the accounting period on which a report is based is more or less than 12 months, a taxable entity must annualize its total revenue to determine its eligibility for the no tax due threshold, discounts, and E-Z Computation. The amount of total revenue used in the actual tax calculations will not change as a result of annualizing revenue. To annualize total revenue, an entity will divide total revenue by the number of days in the period upon which the report is based, and then multiply the result by 365. Examples are as follows:

(A) a taxable entity's 2010 franchise tax report is based on the period September 15, 2009 through December 31, 2009 (108 days), and its total revenue for the period is $375,000. The taxable entity's annualized total revenue is $1,267,361 ($375,000 divided by 108 days multiplied by 365 days). Based on its annualized total revenue, the taxable entity does not qualify for the $1,000,000 no tax due threshold but is eligible to file using the E-Z computation. The discounts do not apply in years when the no tax due threshold is $1,000,000;

(B) a taxable entity's 2010 franchise tax report is based on the period March 1, 2008 through December 31, 2009 (671 days), and its total revenue for the period is $1,375,000. The taxable entity's annualized total revenue is $747,951 ($1,375,000 divided by 671 days multiplied by 365 days). Based on its annualized total revenue, the taxable entity qualifies for the $1,000,000 no tax due threshold and is eligible to file using the No Tax Due Information Report.

(4) No tax due. Effective September 1, 2015, No Tax Due Reports are required to be filed electronically. See §3.587(c)(8)(C) of this title (relating to Margin: Total Revenue) for the tiered partnership exception to filing No Tax Due Reports.

(A) A taxable entity owes no tax and may file a No Tax Due Report if its annualized total revenue is:

*(i)* for reports originally due on or after January 1, 2008, but before January 1, 2010, $300,000 or less;

*(ii)* for reports originally due on or after January 1, 2010, but before January 1, 2012, $1 million or less;

*(iii)* for reports originally due on or after January 1, 2012, but before January 1, 2014, $1,030,000 or less;

*(iv)* for reports originally due on or after January 1, 2014, but before January 1, 2016, $1,080,000 or less;

*(v)* for reports originally due on or after January 1, 2016, but before January 1, 2018, $1,110,000 or less; and

*(vi)* for reports originally due on or after January 1, 2018, the amount determined under Tax Code, §171.006 (Adjustment of Eligibility for No Tax Due, Discounts, and Compensation Deduction).

(B) A taxable entity that has zero Texas receipts owes no tax and may file a No Tax Due Report.

(C) A taxable entity that has tax due of less than $1,000 owes no tax; however, the entity cannot file a No Tax Due Report and must file a regular annual report or, if qualified, the E-Z Computation Report.

(5) Discount. A taxable entity is entitled to a discount of the tax imposed as follows.

(A) For reports originally due on or after January 1, 2008, but before January 1, 2010, if annualized total revenue is:

*(i)* greater than $300,000 and less than $400,000, the discount is 80% of tax due;

*(ii)* greater than or equal to $400,000 and less than $500,000, the discount is 60% of tax due;

*(iii)* greater than or equal to $500,000 and less than $700,000, the discount is 40% of tax due;

*(iv)* greater than or equal to $700,000 and less than $900,000, the discount is 20% of tax due.

(B) For reports originally due on or after January 1, 2010 there are no discounts.

(6) E-Z Computation.

(A) For reports originally due on or after January 1, 2008, and before January 1, 2016, a taxable entity with annualized total revenue of $10 million or less may choose to pay the franchise tax by using the E-Z Computation method. For this period, under the E-Z Computation, a taxable entity's tax liability is computed by applying a tax rate of 0.575% to apportioned total revenue and subtracting any applicable discount as provided by paragraph (5) of this subsection.

(B) For reports originally due on or after January 1, 2016, a taxable entity with annualized total revenue of $20 million or less may choose to pay the franchise tax by using the E-Z Computation method. For this period, under the E-Z Computation, a taxable entity's tax liability is computed by applying a tax rate of 0.331% to apportioned total revenue.

(C) No deductions to compute margin, credits, or other adjustments are allowed if a taxable entity chooses to compute its tax liability under the E-Z Computation.

(7) Tiered partnership provision. See §3.587 of this title for information concerning the tiered partnership provision.

(A) Eligibility for no tax due, discounts and the E-Z Computation. For eligible entities choosing to file under the tiered partnership provision, paragraphs (4), (5), and (6) of this subsection do not apply to an upper or lower tier entity if, before the attribution of total revenue by a lower tier entity to upper tier entities, the lower tier entity does not meet the criteria.

(B) Tiered Partnership Report. The lower tier entity must submit a report to the comptroller indicating its total revenue before attribution and the amount of total revenue that each upper tier entity must include with the upper tier entity's own total revenue. Each upper tier entity must submit a report to the comptroller indicating the lower tier entity's total revenue before attribution and the amount of the lower tier entity's total revenue that was passed to the upper tier entity and is included in the total revenue of the upper tier entity.

(e) Penalty and interest on delinquent taxes.

(1) Tax Code, §171.362 (Penalty for Failure to Pay Tax or File Report), imposes a 5.0% penalty on the amount of franchise tax due by a taxable entity that fails to report or pay the tax when due. If any part of the tax is not reported or paid within 30 days after the due date, an additional 5.0% penalty is imposed on the amount of tax unpaid. There is a minimum penalty of $1.00. Delinquent taxes accrue interest beginning 60 days after the due date. For example, if payment is made on the 61st day after the due date, one day's interest is due. The annual rate of interest on delinquent taxes is the prime rate plus one percent, as published in The Wall Street Journal on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday.

(2) When a taxable entity is issued an audit assessment or other underpayment notice based on a deficiency, penalties under Tax Code, §171.362, and interest are applied as of the date that the underpaid tax was originally due, including any extensions, not from the date of the deficiency determination or date the deficiency determination is final.

(3) A deficiency determination is final 60 [~~30~~] days after the date [~~on which the service of~~] the notice of the determination is issued [~~completed. Service by mail is complete when the notice is deposited with the United States Postal Service~~].

(A) The amount of a determination is due and payable 10 days after it becomes final. If the amount of the determination is not paid within 10 days after the day it became final, a penalty under Tax Code, §111.0081 (When Payment is Required), of 10% of the tax assessed will be added. For example, if a deficiency determination is made in the amount of $1,000 tax (plus the initial penalty and interest), but the total amount of the deficiency is not paid until the 71st [~~41st~~] day after the deficiency notice is issued [~~served~~], $1,200 plus interest would be due (i.e., $1,000 tax, $100 initial penalty for not paying when originally due, $100 penalty for not paying deficiency determination within 10 days after it became final, plus interest accrued to the date of payment at the applicable statutory rate).

(B) A petition for redetermination must be filed within 60 [~~30~~] days after the date [~~on which the service of~~] the notice of determination is issued [~~completed~~], or the redetermination is barred.

(C) A decision on a petition for redetermination becomes final at the time a decision in a contested case is final under Government Code, Chapter 2001 [~~20 days after service on the petitioner of the notice of the decision~~]. The amount of a determination is due and payable 20 days after the decision is final. If the amount of the determination is not paid within 20 days after the day the decision becomes final, a penalty under Tax Code, §111.0081, of 10% of the tax assessed will be added. Using the previous example, on the 21st [~~41st~~] day after [~~service of~~] the decision is final, $1,200 plus interest would be due (i.e., $1,000 tax, $100 initial penalty, $100 additional penalty and the applicable accrued interest).

(4) A jeopardy determination is final 20 days after the date on which the service of the notice is completed unless a petition for re-

determination is filed before the determination becomes final. Service by mail is complete when the notice is deposited with the United States Postal Service. The amount of the determination is due and payable immediately. If the amount determined is not paid within 20 days from the date of service, a penalty, under Tax Code, §111.022 (Jeopardy Determination), of 10% of the amount of tax and interest assessed will be added.

(5) If the comptroller determines that a taxable entity exercised reasonable diligence to comply with the statutory filing or payment requirements, the comptroller may waive penalties or interest for the late filing of a report or for a late payment. The taxable entity requesting waiver must furnish a detailed description of the circumstances that caused the late filing or late payment and the diligence exercised by the taxable entity in attempting to comply with the statutory requirements. See §3.5 of this title (relating to Waiver of Penalty or Interest) for additional information.

(6) If a taxable entity fails to comply with Tax Code, §171.212 (Report of Changes to Federal Income Tax Return), the taxable entity is liable for a penalty of 10% of the tax that should have been reported and had not previously been reported to the comptroller under Tax Code, §171.212. This penalty is in addition to any other penalty provided by law.

(f) Amended reports. In filing an amended report, the taxable entity must type or print on the top of the report the phrase "Amended Report." The report should be forwarded with a cover letter of explanation, with enclosures necessary to support the amendment. Applicable penalties and interest must be reported and paid along with any additional amount of tax shown to be due on the amended report.

(1) A taxable entity may file an amended report for the purpose of correcting a mathematical or other error in a report, for the purpose of supporting a claim for refund, or to change its method of computing margin or, if qualified, to use the E-Z Computation.

(2) A taxable entity that has been audited by the Internal Revenue Service must file an amended franchise tax report within 120 days after the Revenue Agent's Report (RAR) is final, if the RAR results in changes to taxable margin reported for franchise tax purposes. An RAR is final when all administrative appeals with the Internal Revenue Service have been exhausted or waived. An administrative appeal with the Internal Revenue Service does not include an action or proceeding in the United States Tax Court or any other federal court.

(3) A taxable entity whose taxable margin is changed as a result of an audit or other adjustment by a competent authority other than the Internal Revenue Service must file an amended franchise tax report within 120 days after the adjustment is final. An adjustment is final when all administrative or other appeals have been exhausted or waived. For the purposes of this section, a competent authority includes, but is not limited to, the United States Tax Court, United States District Courts, United States Courts of Appeals, and United States Supreme Court.

(4) A taxable entity must file an amended franchise tax report within 120 days after the taxable entity files an amended federal income tax return that changes the taxable entity's taxable margin. A taxable entity is considered to have filed an amended federal income tax return if the taxable entity is a member of an affiliated group during a period in which an amended consolidated federal income tax return is filed.

(5) A final determination resulting from an Internal Revenue Service administrative proceeding (including an audit), or a judicial proceeding arising from an administrative proceeding, that affects the amount of franchise tax liability must be reported to the comptroller before the expiration of 120 days after the day on which the determination becomes final. See Tax Code, §111.206 (Exception to Limitation: Determination Resulting from Administrative Proceeding).

(6) Because the 10% penalty provided for in Tax Code, §171.212 only applies to deficiencies, failure to file an amended return in which a refund would result will not cause a 10% penalty to be imposed.

(g) Comptroller audit. During the course of an audit or other examination of a taxable entity's franchise tax account, the comptroller may examine financial statements, working papers, registers, memoranda, contracts, corporate minutes, and any other business papers used in connection with its accounting system. In connection with the examination, the comptroller may also examine any of the taxable entity's officers or employees under oath.

(h) Payment of determination. The payment of a determination issued to a taxable entity for an estimated tax liability shall not satisfy the reporting requirements set forth in Tax Code, Chapter 171, Subchapter E, concerning reports and records.

(i) Information report. Each taxable entity on which the franchise tax is imposed must file an information report.

(1) Public information report. For a taxable entity legally formed as a corporation, limited liability company, limited partnership, professional association, or financial institution, a public information report as described in Tax Code, §171.203 (Public Information Report), is due at the same time each initial and annual, including the first annual, report is due. An authorized person must sign the public information report on behalf of the taxable entity under a certification that:

(A) all information contained in the report is true and correct to the best of the authorized person's knowledge; and

(B) a copy of the report has been mailed to each person named in the report who is an officer, director, or manager and who is not employed by the taxable entity or a related (at least 10% ownership) taxable entity on the date the report is filed.

(C) A report that is filed electronically complies with the signature and certification requirements of this provision.

(2) Ownership information report. Taxable entities not required to file a public information report must file an ownership information report as described in Tax Code, §171.201 (Initial Report) and §171.202 (Annual Report) is due at the same time each initial and annual, including the first annual, report is due.

(3) Failure to file or sign a public information report or ownership information report shall result in the forfeiture of corporate or business privileges as provided by Tax Code, §171.251 (Forfeiture of Corporate Privileges) and §171.2515 (Forfeiture of Right of Taxable Entity to Transact Business in this State). If the corporate or business privileges are forfeited, each officer or director of the taxable entity may be liable for each debt of the taxable entity that is created or incurred in Texas after the date on which the report is due and before the corporate or business privileges are revived, as provided by Tax Code, §171.255 (Liability of Directors and Officers).

(4) The provisions of paragraph (3) of this subsection, concerning forfeiture of corporate privileges do not apply to a banking taxable entity or a savings and loan association, as defined in Tax Code, §171.0001 (General Definitions).

(5) For purposes of this subsection:

(A) authorized person means, in the case of a corporation, an officer, director or other authorized person of the corporation;

(B) authorized person means, in the case of a limited liability company, a member, manager or other authorized person of the limited liability company;

(C) authorized person means, in the case of a limited partnership, a partner or other authorized person of the partnership;

(D) director includes a manager of a limited liability company, a general partner in a limited partnership and a general partner in a partnership registered as a limited liability partnership;

(E) authorized person also includes a paid preparer authorized to sign the report.

(6) Taxable entities that are members of a combined group and do not have nexus in Texas are not required to file an ownership information report or a public information report.

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 June 10, 2019.

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William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

### CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

### SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

**37 TAC §4.11**

The Texas Department of Public Safety (the department) proposes amendments to §4.11, concerning General Applicability and Definitions. The proposed amendments are necessary to harmonize updates to 49 CFR with those laws adopted by Texas. These amendments also remove §4.11(c)(1)(E) which is the requirement that household goods movers that are not subject to the Federal Motor Carrier Safety Regulations keep records of duty status. These drivers are not required to comply with 49 CFR Part 395, this requirement is not necessary, and has no practical enforcement mechanism. Removing this requirement will reduce business administrative burdens.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does limit an existing regulation by decreasing the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should positively affect the state's economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Tuesday, July 2, 2019, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.11 regarding General Applicability and Definitions, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Depart-

ment of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

*§4.11. General Applicability and Definitions.*

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385 - 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through July 1, 2019 [~~October 1, 2018~~]. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through July 1, 2019 [~~October 1, 2018~~]. The rules detailed in this section ensure:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely;

(4) commercial motor vehicle operators are qualified, by reason of training and experience, to operate the vehicle safely; and

(5) the minimum levels of financial responsibility for motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce is maintained as required.

(b) Certain terms, when used in the federal motor carrier safety regulations as adopted in subsection (a) of this section, have the following meanings, unless the context clearly indicates otherwise. [~~are defined as:~~]

(1) Motor carrier--Has the meaning assigned by [~~the definition of motor carrier is the same as that given in~~] Texas Transportation Code, §643.001(6) when vehicles operated by the motor carrier meet the applicability requirements of subsection (c) of this section. [~~;~~]

(2) Hazardous material shipper--A [~~hazardous material shipper means a~~] consignor, consignee, or beneficial owner of a shipment of hazardous materials. [~~;~~]

(3) Interstate or foreign commerce--All [~~interstate or foreign commerce includes all~~] movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state. [~~;~~]

(4) Department--The [~~department means the~~] Texas Department of Public Safety. [~~;~~]

(5) Director--The [~~director means the~~] director of the Texas Department of Public Safety or the designee of the director. [~~;~~]

(6) Federal Motor Carrier Safety Administration (FMCSA)--The [~~FMCSA field administrator, as used in the federal motor carrier safety regulations, means the~~] director of the Texas Department of Public Safety for vehicles operating in intrastate commerce. [~~;~~]

(7) Farm vehicle--Any [~~farm vehicle means~~] vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch. [~~;~~]

(8) Commercial motor vehicle--Has [~~commercial motor vehicle has~~] the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, §390.5 if operated interstate. [~~;~~]

(9) Foreign commercial motor vehicle--Has [~~foreign commercial motor vehicle has~~] the meaning assigned by Texas Transportation Code, §648.001. ~~;~~

(10) Agricultural commodity--Has [~~agricultural commodity has~~] the meaning as defined in Title 49, Code of Federal Regulations, §395.2 and includes wood chips. [~~;~~]

(11) Planting and harvesting seasons--Are [~~planting and harvesting seasons are defined as~~] January 1 to December 31.~~;~~

(12) Producer-- [~~producer is defined as a~~] person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper. [~~; and~~]

(13) Off-road motorized construction equipment--Includes [~~off-road motorized construction equipment includes~~] but is not limited to, motor scrapers, backhoes, motor graders, compactors, excavators, tractors, trenchers, bulldozers, and other similar equipment routinely found at construction sites and that is occasionally moved to or from construction sites by operating the equipment short distances on public highways. Off-road motorized construction equipment is not designed to operate in traffic and such appearance on a public highway is only incidental to its primary functions. Off-road motorized construction equipment is not considered to be a commercial motor vehicle as that term is defined in Texas Transportation Code, §644.001.

(14) The phrase "The commercial driver's license requirements of part 383 of this subchapter" as used in Title 49, Code of Federal Regulations, §382.103(a)(1) shall mean the commercial driver's license requirements of Texas Transportation Code, Chapter 522.

(15) For purposes of removal from safety-sensitive functions for prohibited conduct as described in Title 49, Code of Federal Regulations, §382.501(c), commercial motor vehicle means a vehicle subject to the requirements of Texas Transportation Code, Chapter 522 and a vehicle subject to §4.22 of this title (relating to Contract Carriers of Certain Passengers), in addition to those vehicles enumerated in Title 49, Code of Federal Regulations, §382.501(c).

(c) Applicability.

(1) The FMCSA regulations are applicable to the vehicles detailed in subparagraph (A) - (F) [~~(A) - (G)~~] of this paragraph:

(A) a vehicle or combination of vehicles with an actual gross weight or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver;

(D) a vehicle transporting hazardous material requiring a placard;

[~~(E) a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter;~~]

(E) [~~(F)~~] a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States; and

(F) [~~(G)~~] a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers.

(2) The regulations contained in Title 49, Code of Federal Regulations, §392.9a, and all interpretations thereto, are applicable to motor carriers operating exclusively in intrastate commerce and to the intrastate operations of interstate motor carriers that have not been federally preempted by the United Carrier Registration Act of 2005. The term "operating authority" as used in Title 49, Code of Federal Regulations, §392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapter 643, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, §392.9a may request a review under §4.18 of this title (relating to Intrastate Operating Authority Out-of-Service Review). All costs associated with the towing and storage of a vehicle and load declared out-of-service under this paragraph shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385 - 387, 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) A medical examination certificate, issued in accordance with Title 49, Code of Federal Regulations, §§391.14, 391.41, 391.43, and 391.45, shall expire on the date indicated by the medical examiner; however, no such medical examination certificate shall be valid for more than two years from the date of issuance.

(5) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

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 June 4, 2019.

TRD-201901655
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: July 21, 2019
For further information, please call: (512) 424-5848

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TEXAS
Lone Star State
Caroline Hirsch

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

# TITLE 1. ADMINISTRATION

## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 355. REIMBURSEMENT RATES

## SUBCHAPTER J. PURCHASED HEALTH SERVICES

## DIVISION 4. MEDICAID HOSPITAL SERVICES

### 1 TAC §355.8065, §355.8066

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8065, concerning Disproportionate Share Hospital Reimbursement Methodology, and §355.8066, concerning Hospital-Specific Limit Methodology.

The first rule, §355.8065, concerning Disproportionate Share Hospital Reimbursement Methodology is adopted with changes to the proposed text as published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 1939), and therefore will be republished.

The second rule, §355.8066, concerning Hospital-Specific Limit Methodology, is adopted without changes to the proposed text as published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 1939), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments is to describe the methodology for dispensing unspent Disproportionate Share Hospital (DSH) funds, to amend the methodology for calculating future DSH payments, to amend the calculation of the interim hospital-specific limit, and to update and clarify related rule language.

The hospital-specific limit (HSL) is a limit on the amount of payments a hospital may receive for care to Medicaid and low income uninsured patients. HHSC calculates two types of HSLs: an interim HSL and a final HSL. The interim HSL is calculated to determine payment amounts using historical Medicaid and uninsured data. The final HSL is calculated later, during the audit of the program year, using the actual Medicaid and uninsured data from the relevant DSH data year to determine whether hospitals were overpaid. The methodologies described in the state administrative rule and the state plan for calculating the interim and final HSLs are the same, except for a few minor differences.

In 2010, the Centers for Medicare and Medicaid Services (CMS) promulgated a series of Frequently Asked Questions (FAQs) relating to the calculation of the final HSL. FAQ 33 stated that, when calculating the HSL, full payment from commercial insurers should offset the costs of Medicaid beneficiaries who also had commercial insurance.

In December 2014, Texas Children's Hospital sued CMS to stop enforcement of FAQ 33. The court issued a temporary injunction preventing CMS from enforcing that FAQ. In other words, CMS could not require a state to offset eligible DSH costs by payments from commercial insurers in the final HSL calculation.

Since the final HSL calculation described in Texas administrative rule and in the state plan is the same as the interim HSL calculation in all pertinent ways, the injunction indirectly impacted the interim HSL calculation as well. Given the uncertainty of the outcome of this lawsuit, HHSC decided to leave 3.5% of DSH dollars unspent. That practice remained in effect for each DSH program year between 2014 and 2017.

In June 2017, CMS promulgated a rule that codified FAQ 33 and FAQ 34. (FAQ 34 required Medicare payments to offset the costs of Medicaid beneficiaries who were also eligible for Medicare). The Children's Hospital Association of Texas (CHAT) sued CMS to prevent enforcement of the rule. In March of 2018, the federal district court vacated the rule. Soon after, on June 1, 2018, the same federal court ruled in the *Texas Children's Hospital* case that CMS is permanently enjoined from enforcing FAQ 33. In December 2018, CMS withdrew FAQs 33 and 34 and communicated this decision in a published bulletin that also provided additional commentary on its expectations of implementing this change. Specifically, CMS noted that it would accept revised DSH audits that cover hospital services furnished before June 2, 2017, and that the costs reflected in these audits would not be offset by other insurance and Medicare payments.

*Retrospective Methodology Changes for Dispensing Unspent Amounts*

Some of the amendments to §355.8066 change the methodology for calculating the interim HSL that HHSC will use to distribute the unallocated DSH funds. The purpose of those amendments is to describe the interim HSL methodology that would have been used but for CMS' invalidated guidance in FAQ 33. HHSC will calculate an interim HSL by including all eligible costs for the program year and offsetting them by Medicaid and Medicare payments.

The amendments to §355.8065 change the methodology for calculating the DSH payments for program years 2014 - 2017.

First, HHSC will reduce each hospital's revised interim HSL by the amount it has already received for the program year. HHSC will then allocate the unspent DSH funds according to the reduced interim HSLs for all DSH hospitals.

To allocate the available funds, HHSC will apply an "other insurance weight" and a "year-to-date payment weight" to increase Medicaid and low-income days in certain circumstances.

The other insurance weight is calculated by dividing the amount of third party commercial insurance payments from the DSH data year for each hospital by the unrevised HSL. The result, if greater than one, is used as a weight to increase the Medicaid and low-income days for the provider. The purpose of applying the other insurance weight is to address the circumstances of providers that had large amounts of other insurance offset against their HSL and consequently received significantly smaller DSH payments.

The year-to-date payment weight addresses the circumstances of providers that had large amounts of other insurance offset against their HSL. In program years 2014 - 2017, certain providers were not eligible to receive a DSH payment because of the large amount of other insurance payments offsetting their costs in the HSL calculation. The unspent amounts are the only source of DSH payment for these providers for the relevant program years. Because HHSC is not recouping payments in excess of revised interim HSLs given the threat to the safety net in doing so, the providers who have not received any year-to-date payments are even further limited to what they can receive. Therefore, a weight of 20 is proposed to increase the Medicaid and low-income days for those providers.

Finally, if HHSC has calculated a final HSL for any program period (i.e., if the DSH audit has been performed), HHSC will cap the DSH payment for that program period at the final HSL amount.

*Prospective Methodology Changes*

The amendment to §355.8066 changes the methodology for calculating the interim and final HSL for program periods beginning on or after October 1, 2017, by providing that the HSL will not be offset by other insurance payments or Medicare payments.

COMMENTS

The 31-day comment period ended Monday, May 20, 2019.

During this period, HHSC received written comments regarding the proposed rules from multiple hospital systems, the Children's Hospital Association of Texas (CHAT), and Teaching Hospitals of Texas (THOT). HHSC also received two public comments during the rule hearing. A summary of all comments relating to §355.8065 and §355.8066 and HHSC's responses follows.

Comment: THOT and Parkland Memorial Hospital proposed that HHSC adopt a different prospective HSL calculation methodology that would offset Medicare and other insurance payments up to cost (commonly referred to as Senate Bill (S.B.) 7 or the Medicaid and CHIP Payment and Access Commission (MACPAC) methodology).

Response: HHSC is not seeking to implement this methodology at this time. HHSC is currently modeling the impacts of this methodology and gathering feedback from stakeholders. HHSC declines to make the suggested change at this time.

Comment: In addition to echoing THOTs position on S.B. 7, Midland Memorial Hospital requested to be classified as an Urban Public Class 1 hospital (commonly referred to as Large Public or the 6 transferring hospitals) for future DSH payments. THOT also expressed their support for this change in their comment.

Response: Changes to the definition of provider classes were not contemplated as part of these amendments, and HHSC does not feel that stakeholders would have had adequate notice of this type of potential change to provide their feedback during the public comment period. HHSC declines to make the suggested change at this time.

Comment: HHSC received multiple comments in support of the amendments from Texas Children's Hospital, the CHAT, Steward Health Systems, Tenet Healthcare, Community Hospital Corporation, and Universal Healthcare.

Response: No action is required. HHSC appreciates this feedback from providers.

Comment: CHAT identified that in the proposed rule, the methodology used to describe the other insurance weight was described with the numerator and denominator being reversed compared to all other public discussions about the amendments.

Response: HHSC agrees with CHAT's comment and has amended the proposed rule to make this correction. Making this change does not alter the original intent of the proposed methodology that the rules are being amended to implement.

HHSC made minor editorial changes to §355.8065(f) and §355.8065(h)(12)(A) for clarity and readability.

STATUTORY AUTHORITY

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

*§355.8065. Disproportionate Share Hospital Reimbursement Methodology.*

(a) Introduction. Hospitals participating in the Texas Medicaid program that meet the conditions of participation and that serve a disproportionate share of low-income patients are eligible for reimbursement from the disproportionate share hospital (DSH) fund. The Texas Health and Human Services Commission (HHSC) will establish each hospital's eligibility for and amount of reimbursement using the methodology described in this section.

(b) Definitions.

(1) Adjudicated claim--A hospital claim for payment for a covered Medicaid service that is paid or adjusted by HHSC or another payer.

(2) Available DSH funds--The total amount of funds that may be distributed to eligible qualifying DSH hospitals for the DSH program year, based on the federal DSH allotment for Texas (as determined by the Centers for Medicare & Medicaid Services) and available non-federal funds. HHSC may divide available DSH funds for a program year into one or more portions of funds to allow for partial payment(s) of total available DSH funds at any one time with remaining funds to be distributed at a later date(s). If HHSC chooses to make a partial payment, the available DSH funds for that partial payment are limited to the portion of funds identified by HHSC for that partial payment.

(3) Available general revenue funds--The total amount of state general revenue funds appropriated to provide a portion of the non-federal share of DSH payments for the DSH program year for non-state-owned hospitals. If HHSC divides available DSH funds for a program year into one or more portions of funds to allow for partial

payment(s) of total available DSH funds as described in paragraph (2) of this subsection, the available general revenue funds for that partial payment are limited to the portion of general revenue funds identified by HHSC for that partial payment.

(4) Bad debt--A debt arising when there is nonpayment on behalf of an individual who has third-party coverage.

(5) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(6) Charity care--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to indigent individuals, either directly or through other nonprofit or public outpatient clinics, hospitals, or health care organizations. A hospital must set the income level for eligibility for charity care consistent with the criteria established in §311.031, Texas Health and Safety Code.

(7) Charity charges--Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a DSH data year. These charges do not include bad debt charges, contractual allowances, or discounts given to other legally liable third-party payers.

(8) Children's hospital--A hospital within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(9) Disproportionate share hospital (DSH)--A hospital identified by HHSC that meets the DSH program conditions of participation and that serves a disproportionate share of Medicaid or indigent patients.

(10) DSH data year--A twelve-month period, two years before the DSH program year, from which HHSC will compile data to determine DSH program qualification and payment.

(11) DSH program year--The twelve-month period beginning October 1 and ending September 30.

(12) Dually eligible patient--A patient who is simultaneously eligible for Medicare and Medicaid.

(13) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(14) HHSC--The Texas Health and Human Services Commission or its designee.

(15) Hospital-specific limit--The maximum amount applicable to a DSH program year that a hospital may receive in reimbursement for the cost of providing services to individuals who are Medicaid eligible or uninsured. The hospital-specific limit is calculated using the methodology described in §355.8066 of this title (relating to Hospital-Specific Limit Methodology).

(A) Interim hospital-specific limit--Applies to payments that will be made for the DSH program year and is calculated using the methodology described in §355.8066 of this title using interim cost and payment data from the DSH data year.

(B) Final hospital-specific limit--Applies to payments made during a prior DSH program year and is calculated using the methodology as described in §355.8066 of this title using actual cost and payment data from the DSH program year.

(16) Independent certified audit--An audit that is conducted by an auditor that operates independently from the Medicaid agency and the audited hospitals and that is eligible to perform the DSH audit required by CMS.

(17) Indigent individual--An individual classified by a hospital as eligible for charity care.

(18) Inpatient day--Each day that an individual is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere. The term includes observation days, rehabilitation days, psychiatric days, and newborn days. The term does not include swing bed days or skilled nursing facility days.

(19) Inpatient revenue--Amount of gross inpatient revenue derived from the most recent completed Medicaid cost report or reports related to the applicable DSH data year. Gross inpatient revenue excludes revenue related to the professional services of hospital-based physicians, swing bed facilities, skilled nursing facilities, intermediate care facilities, other nonhospital revenue, and revenue not identified by the hospital.

(20) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(21) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(22) Low-income days--Number of inpatient days attributed to indigent patients, calculated as described in subsection (h)(4)(A)(ii) of this section.

(23) Low-income utilization rate--A ratio, calculated as described in subsection (d)(2) of this section, that represents the hospital's volume of inpatient charity care relative to total inpatient services.

(24) Mean Medicaid inpatient utilization rate--The average of Medicaid inpatient utilization rates for all hospitals that have received a Medicaid payment for an inpatient claim, other than a claim for a dually eligible patient, that was adjudicated during the relevant DSH data year.

(25) Medicaid contractor--Fiscal agents and managed care organizations with which HHSC contracts to process data related to the Medicaid program.

(26) Medicaid cost report--Hospital and Hospital Health Care Complex Cost Report (Form CMS 2552), also known as the Medicare cost report.

(27) Medicaid hospital--A hospital meeting the qualifications set forth in §354.1077 of this title (relating to Provider Participation Requirements) to participate in the Texas Medicaid program.

(28) Medicaid inpatient utilization rate (MIUR)--A ratio, calculated as described in subsection (d)(1) of this section, that represents a hospital's volume of Medicaid inpatient services relative to total inpatient services.

(29) MSA--Metropolitan Statistical Area as defined by the United States Office of Management and Budget. MSAs with populations greater than or equal to 137,000, according to the most recent decennial census, are considered "the largest MSAs."

(30) Non-federal percentage--The non-federal percentage equals one minus the federal medical assistance percentage (FMAP) for the program year.

(31) Non-urban public hospital--A rural public-financed hospital, as defined in paragraph (37) of this subsection, or a hospital owned and operated by a governmental entity other than hospitals in Urban public hospital - Class one or Urban public hospital - Class two.

(32) Obstetrical services--The medical care of a woman during pregnancy, delivery, and the post-partum period provided at the hospital listed on the DSH application.

(33) PMSA--Primary Metropolitan Statistical Area as defined by the United States Office of Management and Budget.

(34) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(35) Ratio of cost-to-charges (inpatient only)--A ratio that covers all applicable hospital costs and charges relating to inpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(36) Rural public hospital--A hospital owned and operated by a governmental entity that is located in a county with 500,000 or fewer persons, based on the most recent decennial census.

(37) Rural public-financed hospital--A hospital operating under a lease from a governmental entity in which the hospital and governmental entity are both located in the same county with 500,000 or fewer persons, based on the most recent decennial census, where the hospital and governmental entity have both signed an attestation that they wish the hospital to be treated as a public hospital for all purposes under both this section and §355.8201 of this title (relating to Waiver Payments to Hospitals for Uncompensated Care).

(38) State chest hospital--A public health facility operated by the Department of State Health Services designated for the care and treatment of patients with tuberculosis.

(39) State-owned teaching hospital--A hospital owned and operated by a state university or other state agency.

(40) Third-party coverage--Creditable insurance coverage consistent with the definitions in 45 Code of Federal Regulations (CFR) Parts 144 and 146, or coverage based on a legally liable third-party payer.

(41) Total Medicaid inpatient days--Total number of inpatient days based on adjudicated claims data for covered services for the relevant DSH data year.

(A) The term includes:

*(i)* Medicaid-eligible days of care adjudicated by managed care organizations or HHSC;

*(ii)* days that were denied payment for spell-of-illness limitations;

*(iii)* days attributable to individuals eligible for Medicaid in other states, including dually eligible patients;

*(iv)* days with adjudicated dates during the period; and

*(v)* days for dually eligible patients for purposes of the MIUR calculation described in subsection (d)(1) of this section.

(B) The term excludes:

*(i)* days attributable to Medicaid-eligible patients ages 21 through 64 in an IMD;

*(ii)* days denied for late filing and other reasons; and

*(iii)* days for dually eligible patients for purposes of the following calculations:

*(I)* Total Medicaid inpatient days, as described in subsection (d)(3) of this section; and

*(II)* Pass one distribution, as described in subsection (h)(4) of this section.

(42) Total Medicaid inpatient hospital payments--Total amount of Medicaid funds that a hospital received for adjudicated claims for covered inpatient services during the DSH data year. The term includes payments that the hospital received:

(A) for covered inpatient services from managed care organizations and HHSC; and

(B) for patients eligible for Medicaid in other states.

(43) Total state and local payments--Total amount of state and local payments that a hospital received for inpatient care during the DSH data year. The term includes payments under state and local programs that are funded entirely with state general revenue funds and state or local tax funds, such as County Indigent Health Care, Children with Special Health Care Needs, and Kidney Health Care. The term excludes payment sources that contain federal dollars such as Medicaid payments, Children's Health Insurance Program (CHIP) payments funded under Title XXI of the Social Security Act, Substance Abuse and Mental Health Services Administration, Ryan White Title I, Ryan White Title II, Ryan White Title III, and contractual discounts and allowances related to TRICARE, Medicare, and Medicaid.

(44) Urban public hospital--Any of the urban hospitals listed in paragraph (45) or (46) of this subsection.

(45) Urban public hospital - Class one--A hospital that is operated by or under a lease contract with one of the following entities: the Dallas County Hospital District, the El Paso County Hospital District, the Harris County Hospital District, the Tarrant County Hospital District, the Travis County Healthcare District dba Central Health, or the University Health System of Bexar County.

(46) Urban public hospital - Class two--A hospital that is operated by or under a lease contract with one of the following entities: the Ector County Hospital District, the Lubbock County Hospital District, or the Nueces County Hospital District.

(c) Eligibility. To be eligible to participate in the DSH program, a hospital must:

(1) be enrolled as a Medicaid hospital in the State of Texas;

(2) have received a Medicaid payment for an inpatient claim, other than a claim for a dually eligible patient, that was adjudicated during the relevant DSH data year; and

(3) apply annually by completing the application packet received from HHSC by the deadline specified in the packet.

(A) Only a hospital that meets the condition specified in paragraph (2) of this subsection will receive an application packet from HHSC.

(B) The application may request self-reported data that HHSC deems necessary to determine each hospital's eligibility. HHSC may audit self-reported data.

(C) A hospital that fails to submit a completed application by the deadline specified by HHSC will not be eligible to participate in the DSH program in the year being applied for or to appeal HHSC's decision.

(D) For purposes of DSH eligibility, a multi-site hospital is considered one provider unless it submits separate Medicaid cost reports for each site. If a multi-site hospital submits separate Medicaid

cost reports for each site, for purposes of DSH eligibility, it must submit a separate DSH application for each site.

(E) HHSC will consider a merger of two or more hospitals for purposes of the DSH program for any hospital that submits documents verifying the merger status with Medicare prior to the deadline for submission of the DSH application. Otherwise, HHSC will determine the merged entity's eligibility for the subsequent DSH program year. Until the time that the merged hospitals are determined eligible for payments as a merged hospital, each of the merging hospitals will continue to receive any DSH payments to which it was entitled prior to the merger.

(d) Qualification. For each DSH program year, in addition to meeting the eligibility requirements, applicants must meet at least one of the following qualification criteria, which are determined using information from a hospital's application, from HHSC, or from HHSC's Medicaid contractors, as specified by HHSC:

(1) Medicaid inpatient utilization rate. A hospital's Medicaid inpatient utilization rate is calculated by dividing the hospital's total Medicaid inpatient days by its total inpatient census days for the DSH data year.

(A) A hospital located outside an MSA or PMSA must have a Medicaid inpatient utilization rate greater than the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(B) A hospital located inside an MSA or PMSA must have a Medicaid inpatient utilization rate that is at least one standard deviation above the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(2) Low-income utilization rate. A hospital must have a low-income utilization rate greater than 25 percent.

(A) The low-income utilization rate is the sum (expressed as a percentage) of the fractions calculated in clauses (i) and (ii) of this subparagraph:

*(i)* The sum of the total Medicaid inpatient hospital payments and the total state and local payments paid to the hospital for inpatient care in the DSH data year, divided by a hospital's gross inpatient revenue multiplied by the hospital's ratio of cost-to-charges (inpatient only) for the same period: (Total Medicaid Inpatient Hospital Payments + Total State and Local Payments)/(Gross Inpatient Revenue x Ratio of Costs to Charges (inpatient only)).

*(ii)* Inpatient charity charges in the DSH data year minus the amount of payments for inpatient hospital services received directly from state and local governments, excluding all Medicaid payments, in the DSH data year, divided by the gross inpatient revenue in the same period: (Total Inpatient Charity Charges - Total State and Local Payments)/Gross Inpatient Revenue).

(B) HHSC will determine the ratio of cost-to-charges (inpatient only) by using information from the appropriate worksheets of each hospital's Medicaid cost report or reports that correspond to the DSH data year. In the absence of a Medicaid cost report for that period, HHSC will use the latest available submitted Medicaid cost report or reports.

(3) Total Medicaid inpatient days.

(A) A hospital must have total Medicaid inpatient days at least one standard deviation above the mean total Medicaid inpatient days for all hospitals participating in the Medicaid program, except;

(B) A hospital in a county with a population of 290,000 persons or fewer, according to the most recent decennial census, must have total Medicaid inpatient days at least 70 percent of the sum of the mean total Medicaid inpatient days for all hospitals in this subset plus one standard deviation above that mean.

(C) Days for dually eligible patients are not included in the calculation of total Medicaid inpatient days under this paragraph.

(4) Children's hospitals, state-owned teaching hospitals, and state chest hospitals. Children's hospitals, state-owned teaching hospitals, and state chest hospitals that do not otherwise qualify as disproportionate share hospitals under this subsection will be deemed to qualify. A hospital deemed to qualify must still meet the eligibility requirements under subsection (c) of this section and the conditions of participation under subsection (e) of this section.

(5) Merged hospitals. Merged hospitals are subject to the application requirement in subsection (c)(3)(E) of this section. HHSC will aggregate the data used to determine qualification under this subsection from the merged hospitals to determine whether the single Medicaid provider that results from the merger qualifies as a Medicaid disproportionate share hospital.

(6) Hospitals that held a single Medicaid provider number during the DSH data year, but later added one or more Medicaid provider numbers. Upon request, HHSC will apportion the Medicaid DSH funding determination attributable to a hospital that held a single Medicaid provider number during the DSH data year (data year hospital), but subsequently added one or more Medicaid provider numbers (new program year hospital(s)) between the data year hospital and its associated new program year hospital(s). In these instances, HHSC will apportion the Medicaid DSH funding determination for the data year hospital between the data year hospital and the new program year hospital(s) based on estimates of the division of Medicaid inpatient and low income utilization between the data year hospital and the new program year hospital(s) for the program year, so long as all affected providers satisfy the Medicaid DSH conditions of participation under subsection (e) of this section and qualify as separate hospitals under subsection (d) of this section based on HHSC's Medicaid DSH qualification criteria in the applicable Medicaid DSH program year. In determining whether the new program year hospital(s) meet the Medicaid DSH conditions of participation and qualification, proxy program year data may be used.

(e) Conditions of participation. HHSC will require each hospital to meet and continue to meet for each DSH program year the following conditions of participation:

(1) Two-physician requirement.

(A) In accordance with Social Security Act §1923(e)(2), a hospital must have at least two licensed physicians (doctor of medicine or osteopathy) who have hospital staff privileges and who have agreed to provide nonemergency obstetrical services to individuals who are entitled to medical assistance for such services.

(B) Subparagraph (A) of this paragraph does not apply if the hospital:

*(i)* serves inpatients who are predominantly under 18 years of age; or

*(ii)* was operating but did not offer nonemergency obstetrical services as of December 22, 1987.

(C) A hospital must certify on the DSH application that it meets the conditions of either subparagraph (A) or (B) of this paragraph, as applicable, at the time the DSH application is submitted.

(2) Medicaid inpatient utilization rate. At the time of qualification and during the DSH program year, a hospital must have a Med-

icaid inpatient utilization rate, as calculated in subsection (d)(1) of this section, of at least one percent.

(3) Trauma system.

(A) The hospital must be in active pursuit of designation or have obtained a trauma facility designation as defined in §780.004 and §§773.111 - 773.120, Texas Health and Safety Code, respectively, and consistent with 25 TAC §157.125 (relating to Requirements for Trauma Facility Designation) and §157.131 (relating to the Designated Trauma Facility and Emergency Medical Services Account). A hospital that has obtained its trauma facility designation must maintain that designation for the entire DSH program year.

(B) HHSC will receive an annual report from the Office of EMS/Trauma Systems Coordination regarding hospital participation in regional trauma system development, application for trauma facility designation, and trauma facility designation or active pursuit of designation status before final qualification determination for interim DSH payments. HHSC will use this report to confirm compliance with this condition of participation by a hospital applying for DSH funds.

(4) Maintenance of local funding effort. A hospital district in one of the state's largest MSAs or in a PMSA must not reduce local tax revenues to its associated hospitals as a result of disproportionate share funds received by the hospital. For this provision to apply, the hospital must have more than 250 licensed beds.

(5) Retention of and access to records. A hospital must retain and make available to HHSC records and accounting systems related to DSH data for at least five years from the end of each DSH program year in which the hospital qualifies, or until an open audit is completed, whichever is later.

(6) Compliance with audit requirements. A hospital must agree to comply with the audit requirements described in subsection (o) of this section.

(7) Merged hospitals. Merged hospitals are subject to the application requirement in subsection (c)(3)(E) of this section. If HHSC receives documents verifying the merger status with Medicare prior to the deadline for submission of the DSH application, the merged entity must meet all conditions of participation. If HHSC does not receive the documents verifying the merger status with Medicare prior to the deadline for submission of the DSH application, any proposed merging hospitals that are receiving DSH payments must continue to meet all conditions of participation as individual hospitals to continue receiving DSH payments for the remainder of the DSH program year.

(8) Changes that may affect DSH participation. A hospital receiving payments under this section must notify HHSC's Rate Analysis Department within 30 days of changes in ownership, operation, provider identifier, designation as a trauma facility or as a children's hospital, or any other change that may affect the hospital's continued eligibility, qualification, or compliance with DSH conditions of participation. At the request of HHSC, the hospital must submit any documentation supporting the change.

(f) Hospital-specific limit calculation. HHSC uses the methodology described in §355.8066 of this title to calculate an interim hospital-specific limit for each Medicaid hospital that applies and qualifies to receive payments for the DSH program year under this section, and a final hospital-specific limit for each hospital that received payments in a prior program year under this section. For payments for each DSH program year beginning before October 1, 2017, the interim hospital-specific limit calculated as described in §355.8066 will be reduced by the amount of prior payments received by each participating hospital for that DSH program year. These prior payments will not be considered anywhere else in the calculation.

(g) Distribution of available DSH funds. HHSC will distribute the available DSH funds as defined in subsection (b)(2) of this section among eligible, qualifying DSH hospitals using the following priorities:

(1) State-owned teaching hospitals, state-owned IMDs, and state chest hospitals. HHSC may reimburse state-owned teaching hospitals, state-owned IMDs, and state chest hospitals an amount less than or equal to their interim hospital-specific limits, except that aggregate payments to IMDs statewide may not exceed federally mandated reimbursement limits for IMDs.

(2) Other hospitals. HHSC distributes the remaining available DSH funds, if any, to other qualifying hospitals using the methodology described in subsection (h) of this section.

(A) The remaining available DSH funds equal the lesser of the funds as defined in subsection (b)(2) of this section less funds expended under paragraph (1) of this subsection or the sum of remaining qualifying hospitals' interim hospital-specific limits.

(B) The remaining available general revenue funds equal the funds as defined in subsection (b)(3) of this section.

(h) DSH payment calculation.

(1) Data verification. HHSC uses the methodology described in §355.8066(e) of this title to verify the data used for the DSH payment calculations described in this subsection. The verification process includes:

(A) notice to hospitals of the data provided to HHSC by Medicaid contractors; and

(B) an opportunity for hospitals to request HHSC review of disputed data.

(2) Establishment of DSH funding pools. From the amount of remaining DSH funds determined in subsection (g)(2) of this section, HHSC will establish three DSH funding pools.

(A) Pool One.

*(i)* Pool One is equal to the sum of the remaining available general revenue funds and associated federal matching funds; and

*(ii)* Pool One payments are available to all non-state-owned hospitals, including non-state-owned public hospitals.

(B) Pool Two.

*(i)* Pool Two is equal to the lesser of:

*(I)* the amount of remaining DSH funds determined in subsection (g)(2) of this section less the amount determined in paragraph (2)(A) of this subsection multiplied by the FMAP in effect for the program year; or

*(II)* the federal matching funds associated with the intergovernmental transfers received by HHSC that make up the funds for Pool Three; and

*(ii)* Pool Two payments are available to all non-state-owned hospitals except for any urban public hospital as defined in subsection (b)(44) of this section; rural public hospital as defined in subsection (b)(36) of this section; or rural public-financed hospital as defined in subsection (b)(37) of this section owned by or affiliated with a governmental entity that does not transfer any funds

to HHSC for Pool Three as described in subparagraph (C)(iii) of this paragraph.

(C) Pool Three.

*(i)* Pool Three is equal to the sum of intergovernmental transfers for DSH payments received by HHSC from governmental entities that operate or are under lease contracts with Urban public hospitals - Class one and Class two and non-urban public hospitals.

*(ii)* Pool Three payments are available to the hospitals that are operated by or under lease contracts with the governmental entities described in clause (i) of this subparagraph that provide intergovernmental transfers.

*(iii)* HHSC will allocate responsibility for funding Pool Three as follows:

*(I)* Urban public hospitals - Class two. Each governmental entity that operates or is under a lease contract with an Urban public hospital - Class two is responsible for funding an amount equal to the non-federal share of Pass One and Pass Two DSH payments from Pool Two (calculated as described in paragraphs (4) and (5) of this subsection) to that hospital.

*(II)* Non-urban public hospitals.

(-a-) Each governmental entity that operates or is under a lease contract with a non-urban public hospital is responsible for funding one-half of the non-federal share of the hospital's Pass One and Pass Two DSH payments from Pool Two (calculated as described in paragraphs (4) and (5) of this subsection) to that hospital.

(-b-) If general revenue available for Pool One does not equal at least one-half of the non-federal share of non-urban public hospitals' Pass One and Pass Two DSH payments from Pool Two, each governmental entity that operates or is under a lease contract with a non-urban public hospital is responsible for increasing its funding of the non-federal share of that hospital's Pass One and Pass Two DSH payments from Pool Two by an amount equal to the Pool One general revenue shortfall associated with the hospital.

*(III)* Urban public hospitals - Class one. Each governmental entity that operates or is under a lease contract with an Urban public hospital - Class one is responsible for funding the non-federal share of the Pass One and Pass Two DSH payments from Pool Two (calculated as described in paragraphs (4) and (5) of this subsection) to its affiliated hospital and a portion of the non-federal share of the Pass One and Pass Two DSH payments from Pool Two to private hospitals. For funding payments to private hospitals, HHSC will initially suggest an amount in proportion to each Urban public hospital - Class one's individual interim hospital-specific limit relative to total hospital-specific limits for all Urban public hospitals - Class one. If an entity transfers less than the suggested amount, HHSC will take the steps described in paragraph (5)(F) of this subsection.

*(IV)* Following the calculations described in paragraphs (4) and (5) of this subsection, HHSC will notify each governmental entity of its allocated intergovernmental transfer amount.

(3) Weighting factors.

(A) HHSC will assign each non-urban public hospital a weighting factor that is calculated as follows:

*(i)* Determine the non-federal percentage in effect for the program year and multiply by 0.50.

*(ii)* Add 1.00 to the result from clause (i) of this subparagraph and round the result to two decimal places; this rounded sum is the non-urban public hospital weighting factor.

*(iii)* If paragraph (2)(C)(iii)(II)(-b-) of this subsection is invoked, the 0.50 referenced in clause (i) of this subparagraph will be increased to represent the increased proportion of the non-federal share of non-urban public hospitals' Pass One and Pass Two DSH payments from Pool Two required to be funded by these hospitals' associated governmental entities.

(B) All other DSH hospitals not described in subparagraph (A) of this paragraph will be assigned a weighting factor of 1.00, except for DSH program years beginning before October 1, 2017, HHSC will assign weighting factors as follows to each non-state DSH hospital:

*(i)* Other Insurance Weight. HHSC will divide the amount of third party commercial insurance payments for that hospital from the DSH data year by the interim hospital-specific limit calculated according to §355.8066 (c)(1)(D)(ii)(I)(-a-), except that costs are reduced by payments from all payors.

*(I)* The result, if greater than 1, will be used as a weighting factor.

*(II)* If the result is less than 1, no weighting factor will be applied.

*(ii)* Year-To-Date Payment Weight. HHSC will assign a weighting factor of 20 to any hospital that did not receive any prior payments for that DSH program year. This weighting factor will be added to the weighting factor calculated in clause (i) of this subparagraph.

(4) Pass One distribution and payment calculation for Pools One and Two.

(A) HHSC will calculate each hospital's total DSH days as follows:

*(i)* Weighted Medicaid inpatient days are equal to the hospital's Medicaid inpatient days multiplied by the appropriate weighting factors from paragraph (3) of this subsection.

*(ii)* Low-income days are equal to the hospital's low-income utilization rate as calculated in subsection (d)(2) of this section multiplied by the hospital's total inpatient days as defined in subsection (b)(18) of this section.

*(iii)* Weighted low-income days are equal to the hospital's low-income days multiplied by the appropriate weighting factors from paragraph (3) of this subsection.

*(iv)* Total DSH days equal the sum of weighted Medicaid inpatient days and weighted low-income days.

(B) Using the results from subparagraph (A) of this paragraph, HHSC will:

*(i)* Divide each hospital's total DSH days from subparagraph (A)(iv) of this paragraph by the sum of total DSH days for all non-state-owned DSH hospitals to obtain a percentage.

*(ii)* Multiply each hospital's percentage as calculated in clause (i) of this subparagraph by the amount determined in paragraph (2)(A) of this subsection to determine each hospital's Pass One projected payment amount from Pool One.

*(iii)* Multiply each hospital's percentage as calculated in clause (i) of this subparagraph by the amount determined in paragraph (2)(B)(i)(I) or (II) of this subsection, as appropriate, to determine each hospital's Pass One projected payment amount from Pool Two.

*(iv)* Sum each hospital's Pass One projected payment amounts from Pool One and Pool Two, as calculated in clauses (ii) and (iii) of this subparagraph respectively. The result of this calculation is the hospital's Pass One projected payment amount from Pools One and Two combined.

*(v)* Divide the Pass One projected payment amount from Pool Two as calculated in clause (iii) of this subparagraph by the hospital's Pass One projected payment amount from Pools One and Two combined as calculated in clause (iv) of this subparagraph. The result of this calculation is the percentage of the hospital's total Pass One projected payment amount accruing from Pool Two.

(5) Pass Two - Redistribution of amounts in excess of hospital-specific limits from Pass One for Pools One and Two combined. In the event that the projected payment amount calculated in paragraph (4)(B)(iv) of this subsection plus any previous payment amounts for the program year exceeds a hospital's interim hospital-specific limit, the payment amount will be reduced such that the sum of the payment amount plus any previous payment amounts is equal to the interim hospital-specific limit. HHSC will sum all resulting excess funds and redistribute that amount to qualifying non-state-owned hospitals that have projected payments, including any previous payment amounts for the program year, below their interim hospital-specific limits. For each such hospital, HHSC will:

(A) subtract the hospital's projected DSH payment from paragraph (4)(B)(iv) of this subsection plus any previous payment amounts for the program year from its interim hospital-specific limit;

(B) sum the results of subparagraph (A) of this paragraph for all hospitals; and

(C) compare the sum from subparagraph (B) of this paragraph to the total excess funds calculated for all non-state-owned hospitals.

*(i)* If the sum of subparagraph (B) of this paragraph is less than or equal to the total excess funds, HHSC will pay all such hospitals up to their interim hospital-specific limit.

*(ii)* If the sum of subparagraph (B) of this paragraph is greater than the total excess funds, HHSC will calculate payments to all such hospitals as follows:

*(I)* Divide the result of subparagraph (A) of this paragraph for each hospital by the sum from subparagraph (B) of this paragraph.

*(II)* Multiply the ratio from subclause (I) of this clause by the sum of the excess funds from all non-state-owned hospitals.

*(III)* Add the result of subclause (II) of this clause to the projected DSH payment for that hospital to calculate a revised projected payment amount from Pools One and Two after Pass Two.

(D) If a governmental entity that operates or leases to an Urban public hospital - Class two does not fully fund the amount described in paragraph (2)(C)(iii)(I) of this subsection, HHSC will reduce the hospital's Pass One and Pass Two DSH payment from Pool Two to the level supported by the amount of the intergovernmental transfer.

(E) If a governmental entity that operates or is under a lease contract with a non-urban public hospital does not fully fund the amount described in paragraph (2)(C)(iii)(II) of this subsection, HHSC will reduce that portion of the hospital's Pass One and Pass Two DSH payment from Pool Two to the level supported by the amount of the intergovernmental transfer.

(F) If a governmental entity that operates or leases to an Urban public hospital - Class one does not fully fund the amount described in paragraph (2)(C)(iii)(III) of this subsection, HHSC will take the following steps:

*(i)* Provide an opportunity for the governmental entities affiliated with the other Urban public hospitals - Class one to transfer additional funds to HHSC;

*(ii)* Recalculate total DSH days for each Urban public hospital - Class one for purposes of the calculations described in paragraphs (4)(B) and (5)(A) - (C) of this subsection as follows:

*(I)* Divide the intergovernmental transfer made on behalf of each Urban public hospital - Class one by the sum of intergovernmental transfers made on behalf of all Urban public hospitals - Class one;

*(II)* Sum the total DSH days for all Urban public hospitals - Class one, calculated as described in paragraph (4)(A) of this subsection; and

*(III)* Multiply the result of subclause (I) of this clause by the result of subclause (II) of this clause to determine total DSH days for that hospital;

*(iii)* Recalculate Pass One payments from Pool Two and Pass Two payments from Pools One and Two for Urban public hospitals - Class one and private hospitals following the methodology described in paragraphs (4)(B) and (5)(A) - (C) of this subsection substituting the results from clause (ii) of this subparagraph for the results from paragraph (4)(A) of this subsection for Urban public hospitals - Class one;

*(iv)* Perform a second recalculation of Pass Two payments from Pools One and Two for Urban public hospitals - Class one as follows:

*(I)* Multiply each hospital's total Pass Two projected payment amount from Pools One and Two from paragraph (5) of this subsection, after performing the recalculation described in clause (iii) of this subparagraph, by the percentage of the hospital's total Pass One projected payment amount accruing from Pool Two from paragraph (4)(B)(v) of this subsection, after performing the recalculation described in clause (iii) of this subparagraph. The result is the hospital's Pass Two projected payment amount from Pool Two;

*(II)* Subtract the hospital's Pass Two projected payment amount from Pool Two from subclause (I) of this clause from the hospital's total Pass Two projected payment amount from Pools One and Two from paragraph (5) of this subsection, after performing the recalculation described in clause (iii) of this subparagraph. The result is the hospital's Pass Two projected payment amount from Pool One;

*(III)* Sum the total Pass Two projected payment amounts from Pool Two, calculated as described in subclause (I) of this clause, for all Urban public hospitals - Class one;

*(IV)* Multiply the result of clause (ii)(I) of this subparagraph for the hospital by the result of subclause (III) of this clause to determine the Pass Two payment from Pool Two for the hospital; and

*(V)* Sum the results of subclauses (II) and (IV) of this clause to determine the total Pass Two payment from Pools One and Two for that hospital; and

*(v)* Use the results of this subparagraph in the calculations described in paragraphs (6) and (7) of this subsection.

(6) Pass One distribution and payment calculation for Pool Three.

(A) HHSC will calculate the initial payment from Pool Three as follows:

*(i)* For each Urban public hospital - Class one and Class two--

*(I)* multiply its total Pool One and Pool Two payments after Pass Two from paragraph (5) of this subsection by the percentage of the hospital's total Pass One projected payment amount accruing from Pool Two from paragraph (4)(B)(v) of this subsection;

*(II)* divide the result from subclause (I) of this clause by the FMAP for the program year; and

*(III)* multiply the result from subclause (II) of this clause by the non-federal percentage. The result is the Pass One initial payment from Pool Three for these hospitals.

*(ii)* For each Non-urban public hospital--

*(I)* multiply its total Pool One and Pool Two payments after Pass Two from paragraph (5) of this subsection by the percentage of the hospital's total Pass One projected payment amount accruing from Pool Two from paragraph (4)(B)(v) of this subsection;

*(II)* divide the result from subclause (I) of this clause by the FMAP for the program year; and

*(III)* multiply the result from subclause (II) of this clause by the non-federal percentage and multiply by 0.50. The result is the Pass One initial payment from Pool Three for these hospitals.

*(IV)* If paragraph (2)(C)(iii)(II)(-b-) of this subsection is invoked, the 0.50 referenced in subclause (III) of this clause will be increased to represent the increased proportion of the non-federal share of non-urban public hospitals' Pass One and Pass Two DSH payments from Pool Two required to be funded by these hospitals' associated governmental entities.

*(iii)* For all other hospitals, the Pass One initial payment from Pool Three is equal to zero.

(B) HHSC will calculate the secondary payment from Pool Three for each Urban public hospital - Class one as follows:

*(i)* Sum the intergovernmental transfers made on behalf of all Urban public hospitals - Class one;

*(ii)* For each Urban public hospital - Class one, divide the intergovernmental transfer made on behalf of that hospital by the sum of the intergovernmental transfers made on behalf of all Urban public hospitals - Class one from clause (i) of this subparagraph;

*(iii)* Sum all Pass One initial payments from Pool Three from subparagraph (A) of this paragraph;

*(iv)* Subtract the sum from clause (iii) of this subparagraph from the total value of Pool Three; and

*(v)* Multiply the result from clause (ii) of this subparagraph by the result from clause (iv) of this subparagraph for each Urban public hospital - Class One. The result is the Pass One secondary payment from Pool Three for that hospital.

*(vi)* For all other hospitals, the Pass One secondary payment from Pool Three is equal to zero.

(C) HHSC will calculate each hospital's total Pass One payment from Pool Three by adding its Pass One initial payment from Pool Three and its Pass One secondary payment from Pool Three.

(7) Pass Two - Secondary redistribution of amounts in excess of hospital-specific limits for Pool Three. For each hospital that received a Pass One initial or secondary payment from Pool Three, HHSC will sum the result from paragraph (5) of this subsection and the result from paragraph (6) of this subsection to determine the hospital's total projected DSH payment. In the event this sum plus any previous payment amounts for the program year exceeds a hospital's interim hospital-specific limit, the payment amount will be reduced such that the sum of the payment amount plus any previous payment amounts is equal to the interim hospital-specific limit. HHSC will sum all resulting excess funds and redistribute that amount to qualifying non-state-owned hospitals eligible for payments from Pool Three that have projected payments, including any previous payment amounts for the program year, below their interim hospital-specific limits. For each such hospital, HHSC will:

(A) subtract the hospital's projected DSH payment plus any previous payment amounts for the program year from its interim hospital-specific limit;

(B) sum the results of subparagraph (A) of this paragraph for all hospitals; and

(C) compare the sum from subparagraph (B) of this paragraph to the total excess funds calculated for all non-state-owned hospitals.

*(i)* If the sum of subparagraph (B) of this paragraph is less than or equal to the total excess funds, HHSC will pay all such hospitals up to their interim hospital-specific limit.

*(ii)* If the sum of subparagraph (B) of this paragraph is greater than the total excess funds, HHSC will calculate payments to all such hospitals as follows:

*(I)* Divide the result of subparagraph (A) of this paragraph for each hospital by the sum from subparagraph (B) of this paragraph.

*(II)* Multiply the ratio from subclause (I) of this clause by the sum of the excess funds from all non-state-owned hospitals.

*(III)* Add the result of subclause (II) of this clause to the projected total DSH payment for that hospital to calculate a revised projected payment amount from Pools One, Two and Three after Pass Two.

(8) Pass Three - additional allocation of DSH funds for rural public and rural public-financed hospitals. Rural public hospitals or rural public-financed hospitals that met the funding requirements described in paragraph (2)(C) of this subsection may be eligible for DSH funds in addition to the projected payment amounts calculated in paragraphs (4) - (7) of this subsection.

(A) For each rural public hospital or rural public financed hospital that met the funding requirements described in paragraph (2)(C) of this subsection, HHSC will determine the projected payment amount plus any previous payment amounts for the program year calculated in accordance with paragraphs (4) - (7) of this subsection, as appropriate.

(B) HHSC will subtract each hospital's projected payment amount plus any previous payment amounts for the program year from subparagraph (A) of this paragraph from each hospital's interim hospital-specific limit to determine the maximum additional DSH allocation.

(C) The governmental entity that owns the hospital or leases the hospital may provide the non-federal share of funding

through an intergovernmental transfer to fund up to the maximum additional DSH allocation calculated in subparagraph (B) of this paragraph. These governmental entities will be queried by HHSC as to the amount of funding they intend to provide through an intergovernmental transfer for this additional allocation. The query may be conducted through e-mail, through the various hospital associations or through postings on the HHSC website.

(D) Prior to processing any full or partial DSH payment that includes an additional allocation of DSH funds as described in this paragraph, HHSC will determine if such a payment would cause total DSH payments for the full or partial payment to exceed the available DSH funds for the payment as described in subsection (b)(2) of this section. If HHSC makes such a determination, it will reduce the DSH payment amounts rural public and rural public-financed hospitals are eligible to receive through the additional allocation as required to remain within the available DSH funds for the payment. This reduction will be applied proportionally to all additional allocations. HHSC will:

*(i)* determine remaining available funds by subtracting payment amounts for all DSH hospitals calculated in paragraphs (4) - (7) of this subsection from the amount in subsection (g)(2) of this section;

*(ii)* determine the total additional allocation supported by an intergovernmental transfer by summing the amounts supported by intergovernmental transfers identified in subparagraph (C) of this paragraph;

*(iii)* determine an available proportion statistic by dividing the remaining available funds from clause (i) of this subparagraph by the total additional allocation supported by an intergovernmental transfer from clause (ii) of this subparagraph; and

*(iv)* multiply each intergovernmental transfer supported payment from subparagraph (C) of this paragraph by the proportion statistic determined in clause (iii) of this subparagraph. The resulting product will be the additional allowable allocation for the payment.

(E) Rural public and rural public-financed hospitals that do not meet the funding requirements of paragraph (2)(C)(iii)(II) of this subsection are not eligible for participation on Pass Three.

(9) Reallocating funds if hospital closes, loses its license or eligibility, or files bankruptcy. If a hospital closes, loses its license, loses its Medicare or Medicaid eligibility, or files bankruptcy before receiving DSH payments for all or a portion of a DSH program year, HHSC will determine the hospital's eligibility to receive DSH payments going forward on a case-by-case basis. In making the determination, HHSC will consider multiple factors including whether the hospital was in compliance with all requirements during the program year and whether it can meet the audit requirements described in subsection (o) of this section. If HHSC determines that the hospital is not eligible to receive DSH payments going forward, HHSC will notify the hospital and reallocate that hospital's disproportionate share funds going forward among all DSH hospitals in the same category that are eligible for additional payments.

(10) HHSC will give notice of the amounts determined in this subsection.

(11) The sum of the annual payment amounts for state owned and non-state owned IMDs are summed and compared to the federal IMD limit. If the sum of the annual payment amounts exceeds the federal IMD limit, the state owned and non-state owned IMDs are reduced on a pro-rata basis so that the sum is equal to the federal IMD limit.

(12) For any DSH program year for which HHSC has calculated the final hospital-specific limit described in §355.8066(c)(2) of this chapter, HHSC will compare the interim DSH payment amount as calculated in subsection (h) of this section to the final hospital-specific limit.

(A) HHSC will limit the payment amount to the final hospital-specific limit if the payment amount exceeds the hospital's final hospital-specific limit.

(B) HHSC will redistribute dollars made available as a result of the capping described in subparagraph (A) of this paragraph to providers eligible for additional payments subject to their final hospital-specific limits, as described in subsection (l) of this section.

(i) Hospital located in a federal natural disaster area. A hospital that is located in a county that is declared a federal natural disaster area and that was participating in the DSH program at the time of the natural disaster may request that HHSC determine its DSH qualification and interim reimbursement payment amount under this subsection for subsequent DSH program years. The following conditions and procedures will apply to all such requests received by HHSC:

(1) The hospital must submit its request in writing to HHSC with its annual DSH application.

(2) If HHSC approves the request, HHSC will determine the hospital's DSH qualification using the hospital's data from the DSH data year prior to the natural disaster. However, HHSC will calculate the one percent Medicaid minimum utilization rate, the interim hospital-specific limit, and the payment amount using data from the DSH data year. The final hospital-specific limit will be computed based on the actual data for the DSH program year.

(3) HHSC will notify the hospital of the qualification and interim reimbursement.

(j) HHSC determination of eligibility or qualification. HHSC uses the methodology described in §355.8066(e) of this title to verify the data and other information used to determine eligibility and qualification under this section. The verification process includes:

(1) notice to hospitals of the data provided to HHSC by Medicaid contractors; and

(2) an opportunity for hospitals to request HHSC review of disputed data and other information the hospital believes is erroneous.

(k) Disproportionate share funds held in reserve.

(1) If HHSC has reason to believe that a hospital is not in compliance with the conditions of participation listed in subsection (e) of this section, HHSC will notify the hospital of possible noncompliance. Upon receipt of such notice, the hospital will have 30 calendar days to demonstrate compliance.

(2) If the hospital demonstrates compliance within 30 calendar days, HHSC will not hold the hospital's DSH payments in reserve.

(3) If the hospital fails to demonstrate compliance within 30 calendar days, HHSC will notify the hospital that HHSC is holding the hospital's DSH payments in reserve. HHSC will release the funds corresponding to any period for which a hospital subsequently demonstrates that it was in compliance. HHSC will not make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(1) and (2) of this section. HHSC may choose not to make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(3) - (7) of this section.

(4) If a hospital's DSH payments are being held in reserve on the date of the last payment in the DSH program year, and no request for review is pending under paragraph (5) of this subsection, the amount of the payments is not restored to the hospital, but is divided proportionately among the hospitals receiving a last payment.

(5) Hospitals that have DSH payments held in reserve may request a review by HHSC.

(A) The hospital's written request for a review must:

*(i)* be sent to HHSC's Director of Hospital Rate Analysis, Rate Analysis Department;

*(ii)* be received by HHSC within 15 calendar days after notification that the hospital's DSH payments are held in reserve; and

*(iii)* contain specific documentation supporting its contention that it is in compliance with the conditions of participation.

(B) The review is:

*(i)* limited to allegations of noncompliance with conditions of participation;

*(ii)* limited to a review of documentation submitted by the hospital or used by HHSC in making its original determination; and

*(iii)* not conducted as an adversarial hearing.

(C) HHSC will conduct the review and notify the hospital requesting the review of the results.

(l) Recovery of DSH funds. Notwithstanding any other provision of this section, HHSC will recoup any overpayment of DSH funds made to a hospital, including an overpayment that results from HHSC error or that is identified in an audit. Recovered funds will be redistributed proportionately to DSH hospitals that had the same source of the non-federal share of the DSH payment in the program year in which the overpayment occurred and that are eligible for additional payments for that program year. For example, funds recovered from state-owned hospitals will be redistributed first to other state-owned hospitals that are eligible for additional payments for that program year. If there are no hospitals eligible for additional payments for that program year that had the same source of the non-federal share of the recovered funds, any remaining funds will be distributed as follows:

(1) the non-federal share will be returned to the governmental entity that provided it during the program year;

(2) the federal share will be distributed proportionately among all hospitals eligible for additional payments that have a source of the non-federal share of the payments; and

(3) the federal share that does not have a source of non-federal share will be returned to CMS.

(m) Failure to provide supporting documentation. HHSC will exclude data from DSH calculations under this section if a hospital fails to maintain and provide adequate documentation to support that data.

(n) Voluntary withdrawal from the DSH program.

(1) HHSC will recoup all DSH payments made during the same DSH program year to a hospital that voluntarily terminates its participation in the DSH program. HHSC will redistribute the recouped funds according to the distribution methodology described in subsection (l) of this section.

(2) A hospital that voluntarily terminates from the DSH program will be ineligible to receive payments for the next DSH program year after the hospital's termination.

(3) If a hospital does not apply for DSH funding in the DSH program year following a DSH program year in which it received DSH funding, even though it would have qualified for DSH funding in that year, the hospital will be ineligible to receive payments for the next DSH program year after the year in which it did not apply.

(4) The hospital may reapply to receive DSH payments in the second DSH program year after the year in which it did not apply.

(o) Audit process.

(1) Independent certified audit. HHSC is required by the Social Security Act (Act) to annually complete an independent certified audit of each hospital participating in the DSH program in Texas. Audits will comply with all applicable federal law and directives, including the Act, the Omnibus Budget and Reconciliation Act of 1993 (OBRA '93), the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), pertinent federal rules, and any amendments to such provisions.

(A) Each audit report will contain the verifications set forth in 42 CFR §455.304(d).

(B) The sources of data utilized by HHSC, the hospitals, and the independent auditors to complete the DSH audit and report include:

*(i)* The Medicaid cost report;

*(ii)* Medicaid Management Information System data; and

*(iii)* Hospital financial statements and other auditable hospital accounting records.

(C) A hospital must provide HHSC or the independent auditor with the necessary information in the time specified by HHSC or the independent auditor. HHSC or the independent auditor will notify hospitals of the required information and provide a reasonable time for each hospital to comply.

(D) A hospital that fails to provide requested information or to otherwise comply with the independent certified audit requirements may be subject to a withholding of Medicaid disproportionate share payments or other appropriate sanctions.

(E) HHSC will recoup any overpayment of DSH funds made to a hospital that is identified in the independent certified audit and will redistribute the recouped funds to DSH providers that are eligible for additional payments subject to their final hospital-specific limits, as described in subsection (l) of this section.

(F) Review of preliminary audit finding of overpayment.

*(i)* Before finalizing the audit, HHSC will notify each hospital that has a preliminary audit finding of overpayment.

*(ii)* A hospital that disputes the finding or the amount of the overpayment may request a review in accordance with the following procedures.

*(I)* A request for review must be received by the HHSC Rate Analysis Department in writing by regular mail, hand delivery or special mail delivery, from the hospital within 30 calendar days of the date the hospital receives the notification described in clause (i) of this subparagraph.

*(II)* The request must allege the specific factual or calculation errors the hospital contends the auditors made that, if corrected, would change the preliminary audit finding.

*(III)* All documentation supporting the request for review must accompany the written request for review or the request will be denied.

*(IV)* The request for review may not dispute the federal audit requirements or the audit methodologies.

*(iii)* The review is:

*(I)* limited to the hospital's allegations of factual or calculation errors;

*(II)* solely a data review based on documentation submitted by the hospital with its request for review or that was used by the auditors in making the preliminary finding; and

*(III)* not an adversarial hearing.

*(iv)* HHSC will submit to the auditors all requests for review that meet the procedural requirements described in clause (ii) of this subparagraph.

*(I)* If the auditors agree that a factual or calculation error occurred and change the preliminary audit finding, HHSC will notify the hospital of the revised finding.

*(II)* If the auditors do not agree that a factual or calculation error occurred and do not change the preliminary audit finding, HHSC will notify the hospital that the preliminary finding stands and will initiate recoupment proceedings as described in this section.

(2) Additional audits. HHSC may conduct or require additional audits.

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 June 5, 2019.

TRD-201901699
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: June 25, 2019
Proposal publication date: April 19, 2019
For further information, please call: (512) 462-6386

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# TITLE 16. ECONOMIC REGULATION

## PART 9. TEXAS LOTTERY COMMISSION

### CHAPTER 402. CHARITABLE BINGO OPERATIONS DIVISION

### SUBCHAPTER D. LICENSING REQUIREMENTS

**16 TAC §402.403**

The Texas Lottery Commission (Commission) adopts an amendment to 16 TAC §402.403 (Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises) with changes to the proposed text as published in the April 26, 2019, issue of the *Texas Register* (44 TexReg 2135). The amended rule text will be republished.

The purpose of the amendment is to establish a limit to the length of time that a lessor of a bingo premises may defer rent payments owed by a licensed bingo conductor before such a deferral is considered a prohibited loan rendering the lessor ineligible for licensure. The Commission is adopting the amendment in response to a recommendation from the Bingo Advisory Committee.

A public comment hearing was held on Wednesday, May 8, 2019, at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. Sharon Ives represented Fort Worth Bookkeeping Inc. and requested clarification on the effect of the rule amendment on quarterly billing and debt forgiveness. River City Bingo, represented by Stephen Fenoglio, provided oral and written comments in support of the proposed amendment at the hearing, but requested that a portion of the added language be removed. The Commission also received a written comment from the Texas Veterans of Foreign Wars ("Texas VFW"), represented by Kimberly Kiplin.

COMMENT: Sharon Ives asked for clarification as to how the rule would impact lessors that billed on a quarterly basis. She also asked for the procedures on debt forgiveness.

RESPONSE: The rule amendment will not impact lessors that bill quarterly, because that is on a 90 day cycle, which leaves another 30 days to collect payment within the time allowed by the rule. As for forgiving debts, the Charitable Bingo Operations Director stated that CBOD will accept letters of forgiveness as proof of debt forgiveness.

COMMENT: River City Bingo commented that it supports the amendment to limit the amount of back rent that charities are obligated to pay to commercial lessors, but expressed concern that the rule would prohibit standard industry billing practices. Specifically, the second part of the proposed second sentence in subsection (b)(4), which reads, "and any payments from any accounting unit or any authorized organization for insurance, utilities, or taxes more than 120 days after the date the lessor received an invoice for the charge" would "prohibit a very normal business practice of a landlord charging triple net expenses . . . whereby the landlord bills these expenses over a twelve-month period." River City Bingo requested that portion of the proposed language be removed.

RESPONSE: The rule amendment is being modified to eliminate the provisions related to utilities, taxes, and insurance due to the variety of billing practices in these areas. The rule will only prohibit rental payments made more than 120 days after the date of an occasion.

COMMENT: Texas VFW commented that it opposes the proposed amendment because it encourages the use of litigation, which goes against public policy and the concept of judicial economy and efficiency. Texas VFW believes that organizations and lessors should be allowed to resolve debt situations between themselves without the need for lawsuits. Additionally, Texas VFW believes that the rule could have the effect of organizations being kicked out of bingo halls, which would disrupt their bingo activities. Texas VFW asks that lessors be allowed to make payment plans for organizations that are behind in payments.

RESPONSE: The Commission disagrees with Texas VFW's request to allow payment plans because a payment plan is

in essence a loan that would render an entity ineligible for licensure as a commercial lessor. Further, allowing a licensed authorized organization to remain in debt to a commercial lessor for an extended period of time would tend to mask the financial status of the debtor organization for the purposes of assessing the organization's ability to generate positive net proceeds from the conduct of bingo, as required by law. The Commission recognizes that some lessors may choose to litigate to collect rent debts owed to them and that some organizations could lose their playing location, but any public policy in favor of discouraging litigation to collect delinquent rent is outweighed by the public's interest in preventing charitable organizations from becoming indebted to commercial lessors and ensuring an organization's compliance with the net proceeds requirement.

The rule amendment is adopted under the Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act; and the Texas Government Code §467.102, which authorizes the Commission to adopt rules for the laws under the Commission's jurisdiction.

The adopted amendment implements the Texas Occupations Code, Chapter 2001.

*§402.403. Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises.*

(a) License for Conduct of Bingo.

(1) A conductor may hold only one regular license to conduct bingo occasions. The license is valid for only the specific days, times, and location indicated on the face of the license.

(2) A licensed authorized organization will be licensed to conduct bingo for specific day(s) of the week at specific time(s) at a specific location and no other license may conflict with those day(s) and time(s).

(b) License to lease bingo premises.

(1) Each location to be leased as a bingo premises must be separately licensed pursuant to separate applications.

(2) Except as required by Occupations Code, §2001.152(a), the Commission may not issue more than one license to lease bingo premises for any one location.

(3) When more organizations apply to play bingo at the premises of a commercial lessor than can be licensed for the premises, the Commission will process only the number of applications for which there are openings with the commercial lessor. The Commission will process the applications in the order in which they are received. Additional applications in excess of the number that may be licensed for the commercial lessor's premises will be denied.

(4) The commission may not issue a commercial lessor license to or renew the license of a person who has loaned money to an authorized organization. A loan shall include a commercial lessor's collection or acceptance of any rental payments from any accounting unit or any authorized organization more than 120 days from the date of the occasion for which the rent is attributed. This subsection is intended to prohibit a lessor from loaning money to a unit or organization by deferring their debts for more than 120 days to allow the unit or organization to demonstrate higher net proceeds than they could demonstrate if they had paid the debt. If debts are not collected within 120 days, the lessor may forgive the debt or pursue collection through a formal legal process. This rule does not apply to any payments collected or accepted by the lessor pursuant to a court order.

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 June 10, 2019.

TRD-201901712
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: June 30, 2019
Proposal publication date: April 26, 2019
For further information, please call: (512) 344-5392

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# 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) adopts the repeal of §89.1311, concerning the memorandum of understanding to provide educational services to released offenders. The repeal is adopted without changes to the proposed text as published in the April 5, 2019 issue of the *Texas Register* (44 TexReg 1633) and will not be republished. The adopted 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.

REASONED 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.

The repeal of 19 TAC §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.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began April 5, 2019, and ended May 6, 2019. No public comments were received.

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

STATUTORY AUTHORITY. The repeal is adopted 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.

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 June 6, 2019.

TRD-201901702
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: June 26, 2019
Proposal publication date: April 5, 2019
For further information, please call: (512) 475-1497

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# TITLE 22. EXAMINING BOARDS

## PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

### CHAPTER 463. APPLICATIONS AND EXAMINATIONS

**22 TAC §463.22**

The Texas State Board of Examiners of Psychologists adopts new rule §463.22, Reinstatement of a License, without changes to the proposed text as published in the March 8, 2019, issue of the *Texas Register* (44 TexReg 1234). The new rule will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

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

No comments were received regarding the adoption of the new rule.

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

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

Filed with the Office of the Secretary of State on June 4, 2019.

TRD-201901675
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 24, 2019
Proposal publication date: March 8, 2019
For further information, please call: (512) 305-7700

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### CHAPTER 465. RULES OF PRACTICE

**22 TAC §465.6**

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §465.6, Public Statements, Advertisements, and Specialty Titles without changes to the proposed text published in the March 8, 2019, issue of the *Texas Register* (44 TexReg 1236). The amended rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

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

No comments were received regarding the adoption of the amendment.

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

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

Filed with the Office of the Secretary of State on June 4, 2019.

TRD-201901676
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 24, 2019
Proposal publication date: March 8, 2019
For further information, please call: (512) 305-7700

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**22 TAC §465.22**

The Texas State Board of Examiners of Psychologists adopts an amendment to rule §465.22, Psychological Records, Test Data and Test Materials without changes to the proposed text as published in the March 8, 2019, issue of the *Texas Register* (44 TexReg 1237). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to clarify the requirement that licensees provide copies of test materials in response to a lawful subpoena. The adopted amendment also serves to remove confusing language regarding permission from the test publishers.

No comments were received regarding the adoption of the amendment.

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

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

Filed with the Office of the Secretary of State on June 4, 2019.

TRD-201901677
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 24, 2019
Proposal publication date: March 8, 2019
For further information, please call: (512) 305-7700

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## CHAPTER 470. ADMINISTRATIVE PROCEDURE

### 22 TAC §470.17

The Texas State Board of Examiners of Psychologists adopts amendment to rule §470.17, Motion for Rehearing, without changes to the proposed text published in the March 8, 2019, issue of the *Texas Register* (44 TexReg 1240). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to ensure conformity with legislative changes made to Chapter 2001 of the Tex. Gov't. Code, namely §§2001.141-2001.147.

No comments were received regarding the adoption of the amendment.

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

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

Filed with the Office of the Secretary of State on June 4, 2019.

TRD-201901678
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 24, 2019
Proposal publication date: March 8, 2019
For further information, please call: (512) 305-7700

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## CHAPTER 473. FEES

### 22 TAC §473.2

The Texas State Board of Examiners of Psychologists adopts amendment to rule §473.2, Examination Fees (Non-Refundable), without changes to the proposed text published in the March 8, 2019, issue of the *Texas Register* (44 TexReg 1242). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted eliminates outdated language regarding the exam fee for the jurisprudence examination.

No comments were received regarding the adoption of the amendment.

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

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

Filed with the Office of the Secretary of State on June 4, 2019.

TRD-201901679
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: June 24, 2019
Proposal publication date: March 8, 2019
For further information, please call: (512) 305-7700

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# TITLE 25. HEALTH SERVICES

## PART 1. DEPARTMENT OF STATE HEALTH SERVICES

## CHAPTER 289. RADIATION CONTROL

## SUBCHAPTER E. REGISTRATION REGULATIONS

### 25 TAC §289.232

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of §289.232 and new §289.232, concerning Radiation Control Regulations for Dental Radiation Machines. New §289.232 is adopted with changes to the proposed text as published in the January 11,

2019, issue of the *Texas Register* (44 TexReg 180), and therefore will be republished. The repeal of §289.232 is adopted without changes to the proposed text as published in the January 11, 2019 issue of the *Texas Register* (44 TexReg 180), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal and new section are necessary due to extensive revisions made throughout the new section. The changes correct rule citation references, define registrant responsibilities, and mirror registration requirements in Title 25, Texas Administrative Code (TAC), §289.226, concerning the registration of radiation machine use and services. In addition, the new section is updated to reflect fee requirements in 25 TAC §289.204, concerning fees for certificates of registration, radioactive material licenses, emergency planning and implementation, and other regulatory services.

Other changes to §289.232 include updating the rules to address the agency's legal requirements to have rules compatible with the Food and Drug Administration, as provided in the Code of Federal Regulations (CFR) on x-ray machine technical requirements; reorganizing current requirements; adding new requirements from staff and stakeholder input; adding and clarifying definitions; and updating terminology. Changes to the section strengthen qualifications for radiation safety officers; require radiation safety officers to review operating and safety procedures at intervals not to exceed 12 months; clarify inspection compliance and hearing procedures; and clarify the requirement for an equipment performance evaluation be performed on radiation machines within 30 days of installation or reinstallation. In addition, the changes clarify timelines and requirements for equipment performance evaluations on the x-ray units; add safety requirements to Operating and Safety Procedures; add requirements for controlling operator's occupational radiation exposure; and strengthen the requirements for digital imaging.

Texas Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Texas Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.232 has been reviewed and DSHS has determined that the reasons for adopting the section continue to exist because a rule on this subject is needed to protect public health and safety and to fulfill DSHS' statutory responsibilities as the state's Radiation Control Agency.

Before publication of the proposed rules, DSHS solicited recommendations from stakeholders, including the Texas State Board of Dental Examiners (in accordance with Texas Health and Safety Code, §401.064), regarding the initial draft of the proposed dental rule changes. DSHS posted draft rule changes on the Radiation Control web site (www.dshs.texas.gov/radiation). Individuals and groups provided input on the posted draft. The Texas State Board of Dental Examiners made no recommendations regarding the draft rules.

A public meeting was held on March 19, 2018, to accept verbal input on the draft rule changes. Representatives from the Texas Dental Association (TDA); Academia Dental Hygiene Educators; Radiological Systems, Inc.; Texas State Board of Dental Examiners; and Texas Academy of General Dentistry attended. Academia Dental Hygiene Educators and Radiological Systems, Inc. offered statements at the meeting. Written and verbal stakeholder statements were reviewed by DSHS Radiation staff and some of the suggestions were included in the proposed new draft rule at publication.

The Medical Committee of the Texas Radiation Advisory Board (TRAB) reviewed the draft proposed rules at its June 22, 2018, meeting and recommended approving the proposed rules without further changes. The TRAB as a whole reviewed the draft proposed rules at its September 28, 2018, meeting and recommended that the proposed repeal and new rule be forwarded without further changes to the HHSC Executive Council for consideration.

The rules were presented to the HHSC Executive Council on December 6, 2018. The council received no comments regarding the proposal.

A public hearing was held on January 24, 2019, to accept comments on the proposed new rule and repeal published in the January 11, 2019, issue of the *Texas Register* (44 TexReg 180). No written or verbal comments were offered during the hearing.

COMMENTS

The 30-day comment period following publication of the proposed rules ended February 11, 2019. During this period, DSHS received written comments regarding the proposal from two commenters: TDA and the University of Texas Health San Antonio, School of Dentistry. A summary of the comments relating to new §289.232 and DSHS' responses follows.

Comment: TDA and University of Texas Health San Antonio, School of Dentistry requested that portions of the rule that is being repealed stay in place.

Response: DSHS maintains that the changes are necessary to align with rule requirements in other sections of Chapter 289.

Comment: Regarding §289.232(c)(3), TDA requested DSHS to allow certain dental offices to use live individuals to aid in the calibration of digital sensors and hand-held x-ray units exposure rates. It was also requested, in the same comment, to be allowed to use live individuals when training. It was stated that it is necessary to take "real shots" when adding new equipment for training purposes.

Response: DSHS disagrees and maintains that it is never appropriate to deliberately expose a human being to radiation unless there is a healing arts purpose and unless such exposure has been authorized by a licensed practitioner of the healing arts who has ordered the exposure as part of a diagnostic exam or therapeutic procedure. The act of "calibration" requires that the test result, in this case the radiographic image quality, is acquired from a "standard" that is repeatable and consistent so that future results of the test can be compared to the original result. The only way to provide a consistent image is to use an appropriate phantom. Training can be done under the supervision of a licensed dentist in a clinical setting on patients who have had x-ray exams ordered by the licensed dentist. The rule was not revised as a result of the comment.

Comment: Regarding §289.232(c)(4), TDA requested changes or clarifications to match manufacturer guidelines on hand-held radiation machines.

Response: DSHS disagrees with the recommendation to make further changes, as the rule already recommends following manufacturer guidelines in the rule text. It would be problematic to be more specific, as it would limit the scope of the paragraph. The rule was not revised as a result of the comment.

Comment: Regarding §289.232(d)(30), TDA suggested adding the words "to practice dentistry" clarifying the definition of

"dentist," to read "An individual who is licensed to practice dentistry...."

Response: DSHS agrees and the rule text has been changed as suggested.

Comment: Regarding §289.232(d)(126), TDA suggested adding the words "and controlled by a registrant, but does not include the registrant," to the definition of "worker."

Response: DSHS disagrees and declines to revise the rule in response to this comment. Changing the rule text could cause confusion. For example, two doctors share one x-ray machine. Both doctors could meet the commenter's suggested definition of "worker." But, in this situation, the doctors would not meet the definition of a "worker" for the purposes of the dental radiation rule.

Comment: Regarding §289.232(i)(5)(K)(i), §289.232(i)(5)(K)(i)(III), §289.232(i)(5)(K)(ii), TDA requested that the requirement to formally register loaner radiation machines remain at 60 days, as the commenter claims the new 30-day time frame is too restrictive.

Response: DSHS disagrees with the changes recommended by the commenter. The rule text allows the registrant 30 days to make the decision to purchase the loaner machine and, if purchased, allows an additional 30 days to register the machine. This allows a total of 60 days to purchase and have the machine registered. DSHS believes this amount of time is adequate. The rule was not revised as a result of the comment.

Comment: Regarding §289.232(j)(4)(E)(i), TDA requested guidance on how registrants will establish a protocol to protect against machine theft based on the types of machines in their possession.

Response: DSHS believes the rule is sufficiently clear, and further detail could be too restrictive for dental facilities. The rule currently states that facilities must "secure the unit against theft or unauthorized use," and, for hand-held units, includes examples of appropriate practices such as "storing the unit in locked cabinets, storage rooms or work areas when not under immediate supervision of authorized users." The rule was not revised as a result of the comment.

Comment: Regarding §289.232(j)(5)(J)(i), TDA requested that the rule requiring Equipment Performance Evaluations (EPE) retain the time frame of every four years following initial registration of a machine and 90 days for an EPE following a repair that affects radiation output. The commenter states that the new rule requiring EPE to be completed on radiation machines within 30 days after machine installation, within 30 days of reinstallation, or within 30 days following a repair that affects radiation output is overly restrictive.

Response: DSHS disagrees with the commenter's suggestion, as the rule is being changed to align with other rules under Chapter 289 of the Texas Administrative Code. The rule was not revised as a result of the comment.

Comment: Regarding §289.232(j)(14)(B), TDA requested DSHS to create a template or testing protocol that registrants could consult in situations in which Quality Assurance/Quality Control (QA/QC) protocol was not established by the manufacturer.

Response: DSHS agrees that the information could be made available to registrants and plans to include this in the rule guidance document on the DSHS Radiation Control Program website. However, it will not be added to rule text because it could be too restrictive.

Comment: Regarding §289.232(j)(14)(B)(i), the University of Texas Health San Antonio, School of Dentistry requested DSHS to consider changing the QA/QC protocols for large dental schools to allow for x-ray machine output testing once per year to correspond with the annual x-ray output tests that are performed by a Health Physicist. The commenter cited the volume and variety of its equipment, as well as its use of equipment for imaging on both humans and non-humans, when claiming that the rule's current requirement of testing every three months is overly burdensome.

Response: DSHS disagrees with the commenter's suggested changes and recommends that such complex facilities consider using a more robust organizational system that would allow the facility to test its equipment more efficiently. The rule was not revised as a result of the comment.

Comment: Regarding §289.232(l), TDA wanted confirmation from DSHS that consultants can be present during a dental facility inspection "as long as the consultant does not interfere with the inspection and inspectors are able to freely interact with the dentist, registrant, and authorized individuals that actually use the equipment on a regular basis." TDA also wanted confirmation that DSHS inspections would be conducted "in a manner that avoids disruptions in patient care and is convenient for dentists."

Response: DSHS notes that the rule changes regarding inspection procedures do not affect either the ability of consultants to be present under the circumstances TDA described. The changes also do not affect DSHS' statutory authority to conduct unannounced inspections or its responsibility to do so in a manner designed to cause as little disruption of a dental practice as is practicable. The rule was not revised as a result of the comments.

Comment: Regarding §289.232(l)(3)(E)(iii), TDA asked DSHS to provide examples of severity levels specific to dental radiation machines in order to help educate registrant dentists.

Response: The examples of severity levels will be added into the rule guidance document that will be available on the DSHS Radiation Control Program website. The rule was not revised as a result of the comment.

Comment: Regarding the rule in general, TDA "requested to be given access to the training inspector training requirements detailed in the Radiation Control Program policies and procedures manual."

Response: DSHS agrees. The Radiation Control Program's policies and procedures manual is public information and is available through the Public Information Act. The rule was not revised as a result of the comment.

Minor editorial changes were made to §§289.232(d)(95), 289.232(e)(6), and 289.232 (j)(5)(J)(i) for clarification. Also, §289.232(i)(5)(D) was amended to create uniformity with other subparagraphs within the subsection.

STATUTORY AUTHORITY

The repeal is authorized by Texas Health and Safety Code, Chapter 401, the "Texas Radiation Control Act," which provides for DSHS to institute and maintain a regulatory program for sources of radiation; §401.051, which provides the required authority to adopt rules and guidelines relating to the con-

trol of sources of radiation; §401.064, which provides for the authority to adopt rules related to inspection of x-ray equipment; §401.101, providing for DSHS registration of facilities possessing sources of radiation; Chapter 401, Subchapter J, which authorizes enforcement of the Act; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. The review of the rules implements Texas Government Code, §2001.039, regarding review of existing rules.

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

Filed with the Office of the Secretary of State on June 5, 2019.

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General Counsel
Department of State Health Services
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Proposal publication date: January 11, 2019
For further information, please call: (512) 834-6659

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**25 TAC §289.232**

The new section is authorized by Texas Health and Safety Code, Chapter 401, the "Texas Radiation Control Act," which provides for DSHS to institute and maintain a regulatory program for sources of radiation; §401.051, which provides the required authority to adopt rules and guidelines relating to the control of sources of radiation; §401.064, which provides for the authority to adopt rules related to inspection of x-ray equipment; §401.101, providing for DSHS registration of facilities possessing sources of radiation; Chapter 401, Subchapter J, which authorizes enforcement of the Act; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001. The review of the rules implements Texas Government Code, §2001.039, regarding review of existing rules.

*§289.232. Radiation Control Regulations for Dental Radiation Machines.*

(a) Purpose. This section establishes the requirements for the use of dental radiation machines.

(1) Fees for certificates of registration for dental facilities and provisions for their payment will be processed in accordance with subsection (h) of this section or §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), as amended.

(2) Requirements of persons using radiation machines are as follows.

(A) No person shall use radiation machines except as authorized in a certificate of registration issued by the agency in accordance with the requirements of this section.

(B) A person who receives, possesses, uses, owns, or acquires radiation machines before receiving a certificate of registration is subject to the requirements of this chapter.

(3) Requirements intended to control the receipt, possession, use, and transfer of radiation machines by any person so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in this chapter. However, nothing in this section shall be construed as limiting actions that may be necessary to protect health and safety in an emergency.

(4) Requirements for the use of radiation machines include that the registrant shall ensure the requirements of this section are met in the operation of such radiation machines and only persons who have received proper instructions in the safe use of radiation machines shall be permitted to operate the radiation machines.

(5) Requirements for specific record keeping and general provisions for records and reports are included in this section.

(6) Requirements for providing notices to employees and instructions and options available to such individuals in connection with agency inspections of registrants to determine compliance with the provisions of the Texas Radiation Control Act, Health and Safety Code, Chapter 401, and requirements of this section, orders, and certificates of registration issued thereunder regarding radiological working conditions.

(7) Governing of the following in accordance with the Texas Radiation Control Act, Health and Safety Code, Chapter 401; the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001; Title 1, Texas Administrative Code, Chapter 155; and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title:

(A) proceedings for the granting, denying, renewing, transferring, amending, suspending, revoking, or annulling of a certificate of registration;

(B) determining compliance with or granting of exemptions from requirements of this section, an order, or a condition of the certificate of registration;

(C) assessing administrative penalties; and

(D) determining propriety of other agency orders.

(b) Scope.

(1) Except as specifically provided in other sections of this chapter, this section applies to persons who receive, possess, use, or transfer dental radiation machines.

(A) The dose limits in this section do not apply to doses due to background radiation, to exposure of patients to radiation for dental diagnosis, to exposure from individuals administered radioactive material and released in accordance with this chapter, or to voluntary participation in medical research programs.

(B) No radiation may be deliberately applied to human beings except by or under the supervision of a dentist licensed by the Texas State Board of Dental Examiners.

(2) Registrants who are also registered by the agency to receive, possess, acquire, transfer, or use class IIIb and class IV lasers in dentistry shall also comply with the requirements of §289.301 of this title (relating to Registration and Radiation Safety Requirements for Lasers and Intense-Pulsed Light Devices).

(3) Dental radiation machines located in a facility that also has other healing arts radiation machines will be inspected at the inter-

vals specified in §289.231(ll)(2) of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation).

(4) The agency may, by requirements in this chapter, an order, or a condition of the certificate of registration, impose upon any registrant such requirements in addition to those established in this section as it deems appropriate or necessary to minimize danger to public health and safety or the environment.

(5) Registrants who are also specifically licensed by the agency to receive, possess, use, and transfer radioactive materials shall also comply with the applicable requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Materials), §289.203 of this title (relating to Notice, Instructions, and Reports to Workers; Inspections), §289.204 of this title, §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.252 of this title (relating to Licensing of Radioactive Material), §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(c) Prohibitions.

(1) The agency may prohibit use of radiation machines that pose significant threat or endanger occupational and public health and safety, in accordance with subsections (a) - (g) and (l)(3) of this section.

(2) Individuals shall not be exposed to the useful beam except for healing arts purposes authorized by a dentist. This provision specifically prohibits deliberate exposure for the following purposes:

(A) exposure of an individual for training, demonstration, or other non-healing arts purposes; or

(B) exposure of an individual for research except as authorized by subsection (j)(6) of this section.

(3) No person shall cause the operation of a radiation machine that results in exposure of an individual to the useful beam for training, demonstration, or other non-healing arts purposes.

(4) In no case shall an individual hold the tube or tube housing assembly support during any radiographic exposure. Hand-held radiation machines shall be held only in the manner specified by manufacturer recommendation.

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

(1) Absorbed dose--The energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) Accessible surface--The external surface of the enclosure or housing provided by the manufacturer.

(3) Act--Texas Radiation Control Act, Health and Safety Code, Chapter 401.

(4) Administrative law judge (ALJ)--A judge employed by the State Office of Administrative Hearings.

(5) Administrative penalty--A monetary penalty assessed by the agency in accordance with Health and Safety Code, §401.384, to emphasize the need for lasting remedial action and to deter future violations.

(6) Adult--An individual 18 or more years of age.

(7) Agency--The Department of State Health Services or its successor.

(8) Agreement State--Any state with which the United States Nuclear Regulatory Commission (NRC) has entered into an effective agreement under §274b of the Atomic Energy Act of 1954 (42 United States Code et seq.), as amended (73 Stat. 689).

(9) Air kerma--The kinetic energy released in air by ionizing radiation. Kerma is the quotient of dE by dM, where dE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is the gray. For purposes of this section, when exposure in air measured in roentgen (R) is to be converted to dose in air measured in gray, a nationally recognized standard air conversion factor shall be used.

(10) Applicant--A person seeking a certificate of registration issued in accordance with the provisions of the Act and the requirements in this section.

(11) As low as is reasonably achievable (ALARA)--Making every reasonable effort to maintain exposures to radiation as far below the dose limits in this section as is practical, consistent with the purpose for which the registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of ionizing radiation and radiation machines in the public interest.

(12) Attenuate--To reduce the exposure rate (air kerma rate) upon passage of radiation through matter.

(13) Automatic exposure control--A device that automatically controls one or more technique factors in order to obtain a required quantity of radiation at preselected locations (See definition for phototimer).

(14) Background radiation--Radiation from cosmic sources; non-technologically enhanced naturally occurring radioactive material, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents, such as Chernobyl, that contribute to background radiation and are not under the control of the registrant. "Background radiation" does not include radiation from sources of radiation regulated by the agency.

(15) Barrier--(See definition for protective barrier.)

(16) Beam-limiting device--A device that provides a means to restrict the dimensions of the x-ray field.

(17) Beam quality (diagnostic x-ray)--A term that describes the penetrating power of the x-ray beam. This is identified numerically by half-value layer and is influenced by kilovolt peak (kVp) and filtration.

(18) Certificate of registration--A form of permission given by the agency to an applicant who has met the requirements for registration set out in the Act and this chapter.

(19) Certified radiation machines--Radiation machines that have been certified in accordance with Title 21, Code of Federal Regulations (CFR).

(20) Coefficient of variation or C--The ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

Figure: 25 TAC §289.232(d)(20)

(21) Collective dose--The sum of the individual doses received in a given period by a specified population from exposure to a specified source of radiation.

(22) Commissioner--The Commissioner of the Department of State Health Services.

(23) Committed effective dose equivalent ($H_{E,50}$)--The sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ($H_{E,50} = \Sigma W_T H_{T,50}$).

(24) Contested case--A proceeding in which the agency determines the legal rights, duties, or privileges of a party after an opportunity for adjudicative hearing.

(25) Continuous pressure type switch--A switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(26) Consultant--An individual who is not routinely engaged in work under the registrant who provides advice related to compliance with this chapter.

(27) Control panel--The part of the radiation machine where the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors are located.

(28) Declared pregnant woman--A woman who has voluntarily informed the registrant, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman voluntarily withdraws the declaration in writing or is no longer pregnant.

(29) Deep dose equivalent ($H_d$), that applies to external whole body exposure--The dose equivalent at a tissue depth of 1 centimeter (1000 milligrams per square centimeter).

(30) Dentist--An individual licensed to practice dentistry by the Texas State Board of Dental Examiners.

(31) Diagnostic source assembly--The tube housing assembly with a beam-limiting device attached.

(32) Director--The director of the radiation control program under the agency's jurisdiction.

(33) Dose--A generic term that means absorbed dose, dose equivalent, or total effective dose equivalent. For purposes of this section, "radiation dose" is an equivalent term.

(34) Dose equivalent ($H_T$)--The product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

(35) Dose limits--The permissible upper bounds of radiation doses established in accordance with this chapter. For purposes of this section, "limits" is an equivalent term.

(36) Effective dose equivalent ($H_E$)--The sum of the products of the dose equivalent to the organ or tissue ($H_T$) and the weighting factors ($W_T$) applicable to each of the body organs or tissues that are irradiated ($H_E = \Sigma W_T H_T$).

(37) Embryo/fetus--The developing human organism from conception until the time of birth.

(38) Entrance exposure (Entrance air kerma)--The entrance exposure in air expressed in roentgens or the entrance dose in air (air kerma) expressed in gray, measured at the point where the center of the useful beam enters the patient.

(39) Equipment performance evaluations (EPE)--Required testing performed by a registered service provider at a specified interval to ensure radiation machines operate in compliance with this chapter.

(40) Exposure--The quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The International System of Units (SI) unit of exposure is the coulomb per kilogram. The roentgen is the special unit of exposure. For purposes of this section, this term is used as a noun.

(41) Exposure rate (air kerma rate)--The exposure per unit of time. For purposes of this section, "air kerma rate" is an equivalent term.

(42) External dose--That portion of the dose equivalent received from any source of radiation outside the body.

(43) Extremity--Hand, elbow, arm below the elbow, foot, knee, and leg below the knee. The arm above the elbow and the leg above the knee are considered part of the whole body.

(44) Field emission equipment--Equipment that uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(45) Filter--Material placed in the useful beam to absorb selected radiations preferentially.

(46) Gray (Gy)--The SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram or 100 rad.

(47) Half-value layer (HVL)--The thickness of a specified material that attenuates the beam of radiation to an extent such that the exposure rate (air kerma rate) is reduced to one-half of its original value.

(48) Healing arts--Any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition.

(49) Hearing--A proceeding to examine an application or other matter before the agency in order to adjudicate rights, duties, or privileges.

(50) Human use--For exposure to x-ray radiation from radiation machines, the external administration of radiation to human beings for healing arts purposes or research or development specifically authorized by the agency.

(51) Image receptor--Any device, such as a fluorescent screen, radiographic film, or digital sensor that transforms incident x-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

(52) Individual--Any human being.

(53) Individual monitoring--The assessment of dose equivalent to an individual by the use of:

(A) individual monitoring devices; or

(B) survey data.

(54) Individual monitoring devices--Devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of this section, "personnel dosimeter," "dosimeter," and "personnel monitoring equipment" are equivalent terms. Examples

of individual monitoring devices include, but are not limited to, film badges, thermoluminescence dosimeters, optically stimulated luminescence dosimeters, pocket ionization chambers (pocket dosimeters), and electronic personal dosimeters.

(55) Informal conference--A meeting held by the agency with a person to discuss the following:

(A) safety, safeguards, or environmental problems;

(B) compliance with regulatory or registration condition requirements;

(C) proposed corrective measures, including, but not limited to, schedules for implementation; and

(D) enforcement options available to the agency.

(56) Inspection--An official thorough examination or observation, including, but not limited to, records, tests, surveys, and monitoring to effectively determine compliance with the Act and requirements of this section, orders, and conditions of the agency.

(57) Institutional Review Board (IRB)--Any board, committee, or other group formally designated by an institution to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

(58) Ionizing radiation--Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, and other nuclear particles.

(59) kV--Kilovolt.

(60) kVp--Kilovolt peak (See definition for peak tube potential).

(61) kWs--Kilowatt-second. It is equivalent to 10 E 3 watt-second, where 1 watt-second =1 kilovolt x 1 milliampere x 1 second.

(62) Lead equivalent--The thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(63) Leakage radiation--Radiation emanating from the diagnostic assembly except for the useful beam and radiation produced when the exposure switch or timer is not activated.

(64) Lens dose equivalent--The external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeters (300 milligrams per square centimeter).

(65) License--A form of permission given by the agency to an applicant who has met the requirements for licensing set out in the Act and this chapter.

(66) Licensed material--Radioactive material received, possessed, used, or transferred under a general or specific license issued by the agency.

(67) Licensee--Any person who is licensed by the agency in accordance with the Act and this chapter.

(68) mA--Milliampere.

(69) mAs--Milliampere-second.

(70) Medical research--The investigation of various health risks and diseases.

(71) Member of the public--Any individual, except when that individual is receiving an occupational dose.

(72) Minor--An individual less than 18 years of age.

(73) Mobile service operation--The provision of radiation machines and personnel at temporary locations for limited time periods.

(74) Monitoring--The measurement of radiation and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of this section, "radiation monitoring" and "radiation protection monitoring" are equivalent terms.

(75) Notice of violation--A written statement prepared by the agency of one or more alleged infringements of a legally binding requirement.

(76) Occupational dose--The dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this section, from voluntary participation in medical research programs, or as a member of the public.

(77) Order--A specific directive contained in a legal document issued by the agency.

(78) Party--A person designated as such by the ALJ. A party may consist of the following:

(A) the agency;

(B) an applicant, licensee, registrant, accredited mammography facility, or certified industrial radiographer; and

(C) any person affected.

(79) Patient--An individual subjected to dental examination, diagnosis, or treatment.

(80) Peak tube potential--The maximum value of the potential difference in kilovolts across the x-ray tube during an exposure.

(81) Person--Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Nuclear Regulatory Commission, and other than federal government agencies licensed or exempted by the United States Nuclear Regulatory Commission.

(82) Personnel monitoring equipment--(See definition for individual monitoring devices).

(83) Phototimer--A method for controlling radiation exposures to image receptors by the amount of radiation that reaches a radiation detection device. The radiation detection device is part of an electronic circuit that controls the duration of time the tube is activated (See definition for automatic exposure control).

(84) Primary protective barrier--(See definition for protective barrier).

(85) Protective barrier--A barrier of radiation absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows:

(A) primary protective barrier--A barrier sufficient to attenuate the useful beam to the required degree; or

(B) secondary protective barrier--A barrier sufficient to attenuate the stray radiation to the required degree.

(86) Public dose--The dose received by a member of the public from exposure to radiation from licensed/registered and unlicensed/unregistered sources of radiation, whether in the possession of the licensee/registrant or other person. It does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with this section, or from voluntary participation in medical research programs, or as a member of the public.

(87) Rad--The special unit of absorbed dose. One rad is equal to an absorbed dose of 100 ergs per gram or 0.01 joule per kilogram (0.01 Gy).

(88) Radiation--One or more of the following:

(A) gamma and x-rays, alpha and beta particles, and other atomic or nuclear particles or rays;

(B) radiation emitted to energy density levels that could reasonably cause bodily harm from an electronic device; or

(C) sonic, ultrasonic, or infrasonic waves from any electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(89) Radiation area--Any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in one hour at 30 centimeters from the radiation machine or from any surface that the radiation penetrates.

(90) Radiation machine--An x-ray system, subsystem, or component capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation. For purposes of this section, "radiation machine," "x-ray equipment," "x-ray system," and "x-ray unit" are equivalent terms. Types of radiation machines include, but are not limited to:

(A) Stationary radiation machine--A radiation machine that is installed in a fixed location.

(B) Hand-held radiation machine--A radiation machine that is designed to be hand-held during operation.

(C) Portable radiation machine--A radiation machine that is mounted on a permanent base with wheels or casters for moving while completely assembled, including a hand-carried radiation machine that is designed to be mounted on a support while operating.

(D) Mobile radiation machine--A radiation machine that is transported in a vehicle to be used at various temporary locations.

(91) Radiation safety officer (RSO)--An individual who has a knowledge of and the authority and responsibility to apply appropriate radiation protection rules, standards, and practices, who shall be specifically authorized on a certificate of registration, and who is the primary contact with the agency.

(92) Radiograph--An image receptor on which the image is created directly or indirectly by an x-ray exposure and results in a permanent record.

(93) Registrant--Any person issued a certificate of registration by the agency in accordance with the Act and this chapter.

(94) Regulation--(See definition for rule).

(95) Rem--The special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem sievert (Sv) is equal to the absorbed dose in rad or gray multiplied by the quality factor (1 rem = 0.01 Sv).

(96) Remote inspection--An examination by the agency of information submitted by the registrant on a form provided by the agency.

(97) Research and development--Research and development is defined as:

(A) theoretical analysis, exploration, or experimentation; or

(B) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, radiation machines, materials, and processes.

(98) Restricted area--An area, access to which is limited by the registrant for protecting individuals against undue risks from exposure to radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(99) Roentgen (R)--The special unit of exposure. One roentgen (R) equals 2.58 x 10-4 coulombs per kilogram of air. (See definition for exposure.)

(100) Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a section but does not include statements concerning the internal management or organization of any agency and does not affect private rights or procedures. The word "rule" was formerly referred to as "regulation."

(101) Scattered radiation--Radiation that has been deviated in direction during passage through matter.

(102) Secondary protective barrier--(See definition for protective barrier).

(103) Severity level--A classification of violations based on relative seriousness of each violation and the significance of the effect of the violation on the occupational or public health or safety or the environment.

(104) Shallow dose equivalent ($H_s$) (that applies to the external exposure of the skin of the whole body or the skin of an extremity)--The dose equivalent at a tissue depth of 0.007 centimeters (7 milligrams per square centimeter).

(105) SI--The abbreviation for the International System of Units.

(106) Sievert--The SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 sievert = 100 rem).

(107) Source of radiation--Any radioactive material or device that is capable of emitting or producing ionizing radiation.

(108) Source-to-image receptor distance--The distance from the source to the center of the input surface of the image receptor.

(109) Source-to-skin distance--The distance from the source to the skin of the patient.

(110) Special units--The conventional units historically used by registrants, i.e., rad (absorbed dose), and rem (dose equivalent).

(111) Stray radiation--The sum of leakage and scattered radiation.

(112) Supervision--The delegating of the task of applying radiation in accordance with this section to persons not licensed in dentistry, who perform tasks under the dentist's control. The dentist assumes full responsibility for these tasks and shall assure that the tasks will be administered correctly.

(113) Survey--An evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, and disposal of radiation machines. When appropriate, such survey includes, but is not limited to, tests, physical examination of location of equipment or radiation machines, and measurements of levels of radiation present, and evaluation of administrative and engineered controls.

(114) Technique chart--A chart that provides technical factors, anatomical examination, and patient size for examination being performed needed to make clinical radiographs when the radiation machine is in manual mode.

(115) Technique factors--The conditions of operation that are specified as follows:

(A) for capacitor energy storage equipment, peak tube potential in kilovolt and quantity of charge in milliampere-second;

(B) for field emission equipment rated for pulsed operation, peak tube potential in kilovolt and number of x-ray pulses; and

(C) for all other radiation machines, peak tube potential in kilovolt and either tube current in milliamperes and exposure time in seconds or the product of tube current and exposure time in milliampere-second.

(116) Termination--A release by the agency of the obligations and authorizations of the registrant under the terms of the certificate of registration. It does not relieve a person of duties and responsibilities imposed by law or rule.

(117) Texas Regulations for Control of Radiation--All sections of Chapter 289 of this title.

(118) Total effective dose equivalent--The sum of the effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(119) Traceable to a national standard--This indicates that a quantity or a measurement has been compared to a national standard, for example, the National Institute of Standards and Technology, directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(120) Tube--An x-ray tube, unless otherwise specified.

(121) Tube housing assembly--The tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when such are contained within the tube housing.

(122) Unrestricted area (uncontrolled area)--An area, access to which is neither limited nor controlled by the registrant. For purposes of this section, "uncontrolled area" is an equivalent term.

(123) Useful beam--Radiation that passes through the window, aperture, core, or other collimating device of the source housing. Also referred to as the primary x-ray beam.

(124) Violation--An infringement of any rule, license or registration condition, order of the agency, or any provision of the Act.

(125) Whole body--For purposes of external exposure, head, trunk, including male gonads, arms above the elbow, or legs above the knee.

(126) Worker--An individual engaged in work under the certificate of registration issued by the agency.

(127) X-ray control panel--A device that controls input power to the x-ray high-voltage generator or the x-ray tube. It includes components such as timers, phototimers, automatic brightness stabilizers, and similar devices that control the technique factors of an x-ray exposure.

(128) X-ray field--That area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate (air kerma rate) is one-fourth of the maximum in the intersection.

(129) X-ray high-voltage generator--A device that transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tubes, high-voltage switches, electrical protective devices, and other appropriate elements.

(130) X-ray system--An assemblage of components for the controlled production of x-rays. It includes, minimally, an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components that function with the system are considered integral parts of the system.

(131) X-ray subsystem--Any combination of two or more components of an x-ray system.

(132) X-ray tube--Any electron tube that is designed to be used primarily for the production of x-rays.

(133) Year--The period of time beginning in January used to determine compliance with the provisions of this chapter. The registrant may change the starting date of the year used to determine compliance by the registrant if the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

(e) Exemptions.

(1) The agency may, upon application or upon its own initiative, exempt a source of radiation or a kind of use or user from the requirements of this section if the agency determines that the law does not prohibit the exemption and it will not result in a significant risk to public health or safety or the environment. In determining such exemptions, the agency will consider:

(A) state of technology;

(B) economic considerations in relation to benefits to the public health and safety; and

(C) other societal, socioeconomic, or public health and safety considerations.

(2) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of this section, if the dose equivalent rate averaged over an area of 10 square centimeters does not exceed 0.5 millirem (5 microsieverts) per hour at 5 centimeters from any accessible surface of such equipment. The production, testing, or factory servicing of such equipment shall not be exempt.

(3) Radiation machines in transit or in storage incident to transit are exempt from the requirements of this section. This exemption does not apply to the providers of radiation machines for mobile services.

(4) Facilities that have placed all radiation machines in storage, including on-site storage secured from unauthorized use or removal, and have notified the agency in writing, are exempt from the requirements of this section. This exemption is void if any radiation machine is energized resulting in the production of radiation. Before resuming use of the radiation machine for human use, the radiation machine shall meet all requirements of this section.

(5) Inoperable radiation machines are exempt from the requirements of this section. For the purposes of this section, an inoperable radiation machine means a radiation machine that cannot be energized when connected to a power supply without repair or modification.

(6) A person who takes possession of a radiation machine as the result of foreclosure, bankruptcy, or other default of payment may possess the radiation machine without registering it. If the radiation machine is energized, it shall be in accordance with this chapter.

(7) No individual monitoring shall be required for personnel operating only dental radiation machines for dental diagnostic purposes.

(8) Portable radiation machines designed to be hand-held are exempt from the requirements of subsections (c)(4) and (j)(5)(C) of this section. The portable radiation machines shall be held according to manufacturer's specifications.

(9) Individuals who are sole practitioners and sole operators, and the only occupationally exposed individual are exempt from the following requirements:

(A) operating and safety procedures specified in subsection (j)(2) of this section;

(B) instruction to workers specified in subsection (j)(3)(D) of this section; and

(C) posting of notices to workers specified in subsection (j)(4)(B) and (C) of this section.

(10) In accordance with Texas Occupations Code, §258.054, dental practices are exempt from the Medical Physics Practice Act, Texas Occupations Code, Chapter 602. Registrants required to have EPE tests performed in accordance with subsection (j)(5)(J) of this section may select any qualified person authorized by registration through the Department of State Health Services, Radiation Control.

(f) Communications.

(1) Except where otherwise specified, all communications and reports concerning this chapter and applications filed under the communications and reports should be mailed by postal service to Radiation Control, Department of State Health Services, P.O. Box 149347, MC 2003, Austin, Texas 78714-9347. Communications, reports, and applications may be delivered in person to the agency's office located at 8407 Wall Street, Austin, Texas, 78754.

(2) Documents received by the agency will be deemed to have been received on the date of the postmark, facsimile, or other electronic media transmission.

(g) Interpretations. Except as specifically authorized by the agency in writing, no interpretation of the meaning of this chapter by any officer or employee of the agency other than a written legal interpretation by the agency, will be considered binding upon the agency.

(h) Fees for certificates of registration for dental facilities.

(1) Payment of fees.

(A) Each application for a certificate of registration shall be accompanied by a nonrefundable fee specified in §289.204 of this title, as amended. No application will be accepted for filing or processed before payment of the full amount specified.

(B) A nonrefundable fee specified in §289.204 of this title, as amended, shall be paid for each certificate of registration for radiation machines used in dentistry. The fee shall be paid every two years and shall be paid in full and on or before the due date stated on the invoice.

*(i)* For each additional use location where radiation machines or services are authorized under the same registration, there will be an additional charge of 30% of the applicable fee.

*(ii)* In the case of a single certificate of registration that authorizes more than one category of radiation machine use, the category listed in §289.204 of this title that is assigned the higher fee will be used.

(C) Each application for reciprocal recognition of an out-of-state registration in accordance with subsection (i)(8) of this section shall be accompanied by the non-refundable fee specified in §289.204 of this title, as amended, provided that no such fee has been submitted within 24 months of the date of commencement of the proposed activity.

(D) Fee payments shall be in cash or by check or money order made payable to the Department of State Health Services. The payments may be made by personal delivery to the central office, Radiation Control, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199 or mailed to Radiation Control, Department of State Health Services, P.O. Box 149347, MC 2003, Austin, Texas 78714-9347.

(2) Failure to pay prescribed fees.

(A) In any case where the agency finds that an applicant for a certificate of registration has failed to pay the non-refundable fee prescribed in §289.204 of this title, as amended, the agency will not process that application until such fee is paid.

(B) In any case where the agency finds that a registrant has failed to pay a fee prescribed by §289.204 of this title, as amended, by the due date, the agency may implement compliance procedures as provided in subsection (l)(3)(C) of this section.

(3) Electronic fee payments. Renewal payments may be processed through www.texas.gov or another electronic payment system specified by the agency. For all types of electronic fee payments, the agency will collect additional fees, in amounts determined by www.texas.gov to recover costs associated with electronic payment processing.

(i) Registration of radiation machine use.

(1) Application for registration of radiation machines.

(A) Application for registration shall be completed on forms prescribed by the agency and shall contain all the information required by the form and accompanying instructions. For initial registrations with multiple radiation machine use locations, a separate application shall be completed for each use location under the registration.

(B) Each person having a radiation machine used in dentistry shall apply for registration with the agency within 30 days after beginning use of the radiation machine, except for mobile services that shall be registered in accordance with paragraph (2) of

this subsection and clinical trial evaluations that shall be registered in accordance with paragraph (5)(K) of this subsection.

(C) If the application is incomplete 60 days after submission, the agency may abandon the application and return the original application. The applicant will cease use of all radiation machines once the application has been abandoned.

(D) The applicant shall ensure that radiation machines will be operated by individuals qualified by reason of training and experience to use the radiation machines for the purpose requested in accordance with this section in such a manner as to minimize danger to occupational and public health and safety.

(E) A radiation safety officer shall be designated on each application form. The qualifications of that individual shall be submitted to the agency with the application. The radiation safety officer shall meet the applicable qualifications of clause (i) of this subparagraph and carry out the responsibilities specified in clause (v) of this subparagraph.

*(i)* The radiation safety officer shall have the following qualifications:

*(I)* knowledge of potential hazards and emergency precautions; and

*(II)* educational courses completed that relate to ionizing radiation safety or a radiation safety officer course; or

*(III)* experience in the use and familiarity of the type of radiation machine used; and

*(ii)* In addition to the qualifications in clause (i) of this subparagraph, documentation of the following shall be submitted to the agency:

*(I)* for dentist radiation safety officers, a dental licensing board number and their signature on the application;

*(II)* for a practitioner radiation safety officer, documentation of a licensing board number; or

*(III)* for non-practitioner radiation safety officers, any one of the following:

(-a-) evidence of a valid general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least two years of supervised experience or supervised use of radiation machines;

(-b-) evidence of a valid limited general certificate issued under the Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601, and at least four years of supervised experience or supervised use of radiation machines;

(-c-) evidence of registry by the American Registry of Radiologic Technologists and at least two years of supervised experience or supervised use of radiation machines;

(-d-) evidence of associate degree in radiologic technology, health physics, or nuclear technology, and at least two years of supervised experience or supervised use of radiation machines;

(-e-) evidence of registration with the Texas Board of Nursing as a Registered Nurse and at least two years of supervised experience or supervised use of radiation machines in the respective specialty;

(-f-) evidence of registration with the Texas Physician Assistant Board, and at least two years of supervised use of radiation machines in the respective specialty;

(-g-) evidence of:

(-1-) registration with the Texas State Board of Dental Examiners to perform radiologic procedures under a dentist's instruction and direction or evidence of a valid certificate as a registered dental hygienist; and

(-2-) at least four years of supervised use of radiation machines in the respective dentist's specialty;

(-h-) evidence of bachelor's (or higher) degree in a natural or physical science, health physics, radiological science, nuclear medicine, or nuclear engineering; or

(-i-) evidence of a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in medical health physics, diagnostic medical physics, or nuclear medical physics for diagnostic x-ray facilities.

*(iii)* Academic institutions and research and development facilities shall have radiation safety officers who are faculty or staff members in radiation protection, radiation engineering, or related disciplines. (This individual may also serve as the radiation safety officer over the dental section of the facility.)

*(iv)* The radiation safety officer identified on a certificate of registration for use of dental radiation machines issued before September 1, 1993, need not comply with the qualification requirements in this subsection.

*(v)* Specific duties of the radiation safety officer include, but are not limited to, the following:

*(I)* establishing and overseeing operating and safety procedures that maintain radiation exposures as low as reasonably achievable, and reviewing the procedures at intervals not to exceed 12 months to ensure that the procedures are current and conform with this section;

*(II)* investigating and reporting to the agency each:

(-a-) known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this section; and

(-b-) theft or loss of radiation machines, determining the cause, and taking steps to prevent its recurrence;

*(III)* assuming control and having the authority to institute corrective actions, including shutdown of operations when necessary in emergencies or unsafe conditions;

*(IV)* making and maintaining records as required by this section; and

*(V)* ensuring that personnel are adequately trained and complying with this section, the conditions of the certificate of registration, and the operating and safety procedures of the registrant.

(F) At any time after the filing of the original application, the agency may require additional information to determine whether the certificate of registration is issued or denied.

(G) An application for a certificate of registration may include a request for a certificate of registration authorizing one or more activities or radiation machine use locations. If an application includes a request for an additional authorization other than use of a dental radiation machine, compliance with other applicable sections of this chapter will be required.

(H) Each application for a certificate of registration shall be accompanied by the fee prescribed in §289.204 of this title, as amended. No application will be accepted for filing or processed before payment of the full amount specified.

(I) Each application shall be accompanied by a completed RC Form 226-1, Business Information Form that shall contain the legal name of the entity or business. The form can be found at http://dshs.texas.gov/radiation/x-ray/medical-faq.aspx. Unless exempt in accordance with the Business and Commerce Code, Chapter 71, the applicant shall:

*(i)* be authorized to conduct business in the State of Texas as listed on the Texas Secretary of State (SOS) website; and

*(ii)* file an assumed name certificate with the Texas SOS if using an assumed name in their application or the office of the county clerk in the county where the business is located.

(J) An application for use of a dental radiation machine shall be signed by a licensed dentist. The signature of the administrator, president, or chief executive officer will be accepted in lieu of a licensed dentist's signature if the facility has more than one licensed dentist who may direct the operation of radiation machines. The application shall also be signed by the radiation safety officer.

(K) Applications and documents submitted to the agency may be made available for public inspection except that the agency may withhold any document or part thereof from public inspection in accordance with subsection (k)(1)(J) and (K) of this section.

(2) Application for registration of mobile service operation used in dentistry. In addition to the requirements of paragraph (1) of this subsection, each applicant shall apply for and receive authorization from the agency for mobile service operation before beginning mobile service operation. The following shall be submitted:

(A) An established main location where the radiation machines and related compliance documents and records will be maintained for inspection. This shall be a street address, not a post office box number.

(B) A sketch or description of the normal configuration of each radiation machine's use, including the operator's position and any ancillary personnel's location during exposures. If a mobile van is used with a fixed radiation machine inside, furnish the floor plan indicating protective shielding and the operator's position.

(C) A current copy of the applicant's operating and safety procedures regarding radiological practices for protection of patients, operators, employees, and the public.

(3) Issuance of certificate of registration.

(A) A certificate of registration will be approved if the agency determines that an application meets the requirements of the Act and the requirements of this chapter. The certificate of registration authorizes the proposed activity and contains the conditions and limitations, as the agency deems appropriate or necessary.

(B) The agency may incorporate in the certificate of registration at the time of issuance, or thereafter by amendment, additional requirements and conditions concerning the registrant's possession, use, and transfer of radiation machines subject to this chapter, as it deems appropriate or necessary in order to:

*(i)* minimize danger to occupational and public health and safety;

*(ii)* require additional records and the keeping of additional records as may be appropriate or necessary; and

*(iii)* prevent loss or theft of radiation machines subject to this chapter.

(C) The agency may request, and the registrant shall provide, additional information after the certificate of registration has been issued to enable the agency to determine whether the certificate of registration should be modified in accordance with paragraph (7) of this subsection.

(4) Terms and conditions of certificates of registration.

(A) Each certificate of registration issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to the applicable requirements of this chapter and orders of the agency.

(B) No certificate of registration issued or granted under this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, to any person unless the agency authorizes the transfer in writing.

(C) Each person registered by the agency for radiation machine use in accordance with this section shall confine use and possession of the radiation machine registered to the locations and purposes authorized in the certificate of registration.

(D) In making a determination whether to grant, deny, amend, revoke, suspend, or restrict a certificate of registration, the agency may consider the technical competence and compliance history of an applicant or holder of a certificate of registration. After an opportunity for a hearing, the agency shall deny an application for a certificate of registration or an amendment to a certificate of registration if the applicant's compliance history reveals that at least three agency actions have been issued against the applicant, within the previous six years, that assess administrative or civil penalties against the applicant, or that revoke or suspend the certificate of registration.

(5) Responsibilities of the registrant.

(A) The registrant is responsible for complying with this section and the conditions of the certificate of registration.

(B) The registrant shall designate an individual qualified in accordance with paragraph (1)(E)(i) of this subsection as the radiation safety officer and shall ensure the individual continually performs the duties of the radiation safety officer as identified in paragraph (1)(E)(v) of this subsection.

(C) Persons using radiation machines in accordance with subsection (i)(2) of this section, concerning application for mobile services, shall have a valid certificate of registration issued by the agency before initiation of the mobile services.

(D) No person shall use a radiation machine unless the person has applied for registration within 30 days after beginning use of the radiation machine in accordance with subsection (i)(1)(B) of this section.

(E) No registrant shall engage any person for services described in §289.226(b)(11) of this title (relating to Registration of Radiation Machine Use and Services) until such person provides to the registrant evidence of registration with the agency.

(F) No person shall provide radiation machine services for a person who cannot produce evidence of a completed application for registration or a valid certificate of registration issued by the agency except for:

*(i)* the initial installation of the first radiation machine for a new certificate of registration; and

*(ii)* the registrant authorized for demonstration and sale may demonstrate a radiation machine in accordance with para-

graph (5)(D) of this subsection, except as prohibited by subsection (c) of this section.

(G) The registrant shall notify the agency in writing of any changes that would render the information contained in the application for registration or the certificate of registration inaccurate. The notification shall be in writing and signed by an authorized representative.

*(i)* Notification is required within 30 days after the following changes:

*(I)* legal business name;

*(II)* mailing address;

*(III)* street address where radiation machine will be used;

*(IV)* additional radiation machine location;

*(V)* radiation safety officer; or

*(VI)* name and registration number of the contracted "provider of equipment," registered in accordance with §289.226 of this title.

*(ii)* The registrant shall notify the agency within 30 days after changes in the radiation machines that include:

*(I)* any change in the category of radiation machine type or type of use as authorized in the certificate of registration (for example, addition of a computerized tomography radiation machine); or

*(II)* any increase in the number of radiation machines authorized by the certificate of registration in any radiation machine type or type of use category.

(H) The registrant, or the parent company, shall notify the agency, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy. This notification shall include:

*(i)* the bankruptcy court in which the petition for bankruptcy was filed; and

*(ii)* the case name and number, and date of filing the petition.

(I) The registrant shall inventory all radiation machines in the registrant's possession at an interval not to exceed one year.

*(i)* The inventory shall include:

*(I)* manufacturer's name;

*(II)* model and serial number of the control panel; and

*(III)* location of all radiation machines, for example, room number.

*(ii)* Records of the inventory shall be made and maintained in accordance with subsection (k)(2) of this section for inspection by the agency.

(J) Receipt, transfer, and disposal of radiation machines.

*(i)* The registrant shall make and maintain records of receipt, transfer, and disposal of radiation machines. The records shall include the following:

*(I)* manufacturer's name and model and serial number from the control panel;

*(II)* date of the receipt, transfer, and disposal;

*(III)* name and address of person the radiation machines received from, transferred to, or disposed of; and

*(IV)* name of the individual recording the information.

*(ii)* Records of receipt, transfer, and disposal of radiation machines shall be made and maintained in accordance with subsection (k)(2) of this section for inspection by the agency.

(K) The following criteria applies to loaner radiation machines.

*(i)* For persons having a valid certificate of registration, loaner radiation machines may be used for up to 30 days. If the loaner radiation machine is used for more than 30 days, the registrant is required, within the next 30 days, to complete the following:

*(I)* notify the agency of any change in the category of radiation machine type or type of use as authorized in the certificate of registration (for example, addition of a computerized tomography radiation machine); or

*(II)* notify the agency of any increase in the number of radiation machines authorized by the certificate of registration in any radiation machine type or type of use category; and

*(III)* perform an EPE on the radiation machines in accordance with subsection (j)(5)(J) of this section.

*(ii)* For persons who do not hold a valid certificate of registration, loaner radiation machines may be used for human use up to 30 days, by or under the supervision of a dentist licensed by Texas State Board of Dental Examiners, before applying for a certificate of registration in accordance with this section.

(6) Termination of certificates of registration. When a registrant decides to terminate all activities involving radiation machines authorized under the certificate of registration, the registrant shall notify the agency immediately and:

(A) request termination of the certificate of registration in writing. The request shall be signed by the radiation safety officer, owner, or an individual authorized to act on behalf of the registrant;

(B) submit to the agency a record of the disposition of the radiation machines and, if transferred, to whom transferred; and

(C) pay any outstanding fees in accordance with subsection (h) of this section.

(7) Modification, suspension, and revocation of certificates of registration.

(A) The terms and conditions of all certificates of registration shall be subject to revision or modification. A certificate of registration may be suspended or revoked by reason of amendments to the Act, by reason of requirements of this chapter or orders issued by the agency.

(B) Any certificate of registration may be revoked, suspended, or modified, in whole or in part in accordance with subsection (l)(3)(C)(iii) of this section.

(C) Each certificate of registration revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the certificate of registration, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(D) Except in cases in which the occupational and public health or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, before the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(8) Reciprocal recognition of out-of-state certificates of registration.

(A) Whenever any radiation machine is to be brought into the State of Texas for any temporary use, the person proposing to bring the radiation machine into the state shall apply for and receive a notice from the agency granting reciprocal recognition before beginning operations. The request for reciprocity shall include the following:

*(i)* completed RC Form 226-1 (Business Information Form);

*(ii)* completed RC Form 252-3 (Notice of Intent to Work in Texas Under Reciprocity);

*(iii)* name and Texas licensing board number of the dentist if the radiation machines are used on humans;

*(iv)* copy of the applicant's current state certificate of registration or equivalent document;

*(v)* copy of the applicant's current operating and safety procedures pertinent to the proposed use;

*(vi)* fee as specified in subsection (h)(1) of this section; and

*(vii)* qualifications of personnel who will be operating the radiation machines.

(B) Upon a determination that the request for reciprocity meets the requirements of the agency, the agency may issue a notice granting reciprocal recognition authorizing the proposed radiation machine use.

(C) Once reciprocity is granted, the out-of-state registrant shall file a RC Form 252-3 with the agency before each entry into the state. This form shall be filed at least three working days before the radiation machine is used in the state. At determination of the agency, the out-of-state registrant may, for a specific case, obtain permission to proceed sooner if the three-day period would impose an undue hardship.

(D) When radiation machines are used as authorized under reciprocity, the out-of-state registrant shall have the following in its possession at all times for inspection by the agency:

*(i)* completed RC Form 252-3;

*(ii)* copy of the notice from the agency granting reciprocity;

*(iii)* copy of the out-of-state registrant's operating and safety procedures; and

*(iv)* copy of the applicable rules as specified in the notice granting reciprocity.

(E) If the state from which the radiation machine is proposed to be brought does not issue certificates of registration or equivalent documents, a certificate of registration shall be obtained from the agency in accordance with the requirements of this section.

(F) The agency may withdraw, limit, or qualify its acceptance of any certificate of registration or equivalent document issued by another agency upon determining that such action is necessary in order to prevent undue hazard to occupational and public health and safety or property or environment.

(G) Reciprocal recognition will expire two years from the date it is granted. A new request for reciprocity shall be submitted to the agency every two years and the items in subparagraph (A) of this paragraph shall be included.

(H) Radiation services provided by a person from out-of-state will not be granted reciprocity. Whenever radiation services are to be provided by a person from out-of-state, that person shall apply for and receive a certificate of registration from the agency before providing radiation services. The application shall be filed in accordance with this subsection, as applicable.

(j) Use of radiation machines.

(1) As low as reasonably achievable. Persons shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as reasonably achievable.

(2) Operating and safety procedures. Each registrant shall have and implement written operating and safety procedures. These procedures shall be read by and accessible to each individual before operating a radiation machine, including any restrictions of the operating technique required for the safe operation of the particular radiation machine.

(A) The registrant shall ensure and document that each individual has read the operating and safety procedures before operating a radiation machine and reviewed the procedures annually not to exceed 12 months. This documentation shall be maintained in accordance with subsection (k)(2) of this section for inspection by the agency. The documentation shall include the following:

*(i)* name and signature of individual;

*(ii)* date individual read the operating and safety procedures; and

*(iii)* initials of the radiation safety officer.

(B) The operating and safety procedures shall include, but are not limited to, the following procedures as applicable:

*(i)* ordering x-ray exams in accordance with subsection (b)(1)(A) and (B) of this section;

*(ii)* providing radiation dose requirements in accordance with paragraph (3)(A) of this subsection;

*(iii)* instructing workers in accordance with paragraph (3)(D) of this subsection;

*(iv)* posting notices to workers in accordance with paragraph (4)(B) of this subsection;

*(v)* posting of a radiation area in accordance with paragraph (4)(C) and (D) of this subsection;

*(vi)* using a technique chart in accordance with paragraph (5)(A) of this subsection;

*(vii)* holding of patients or film in accordance with paragraph (11)(A) and (B) of this subsection and subsection (c)(4) of this section;

*(viii)* following film for processing program or digital imaging acquisition system protocols in accordance with paragraphs (12) - (14) of this subsection;

*(ix)* notifying and reporting to individuals in accordance with subsection (k)(2) and (3) of this section; and

*(x)* ensuring security and control of radiation machines in accordance with paragraph (4)(E)(i) of this subsection.

(3) Personnel requirements.

(A) Occupational dose limits.

*(i)* The registrant shall control the occupational dose to individuals, to the following dose limits.

*(I)* An annual limit shall be the total effective dose equivalent being equal to 5 rems (0.05 sievert).

*(II)* The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of any extremities shall be:

(-a-) a lens dose equivalent of 15 rems (0.15 sievert); and

(-b-) a shallow dose equivalent of 50 rems (0.5 sievert) to the skin of the whole body or to the skin of any extremity.

*(III)* The annual limits for a minor shall be 10% of the annual occupational dose limits specified in subclauses (I) and (II) of this clause.

*(IV)* If a woman declares her pregnancy, the registrant shall ensure that the dose equivalent to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 millisievert). If a woman chooses not to declare pregnancy, the occupational dose limits specified in subclauses (I) and (II) of this clause are applicable to the woman.

*(V)* The registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate (air kerma rate) to a declared pregnant woman to satisfy the limit in clause (i) of this subparagraph. The National Council on Radiation Protection and Measurements recommended in NCRP Report No. 116 "Limitation of Exposure to Radiation" (March 31, 1993) that no more than 0.05 rem (0.5 mSv) to the embryo/fetus be received in any one month.

*(ii)* The assigned deep dose equivalent shall be for the portion of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous 10 cm2 of the skin receiving the highest exposure.

*(iii)* The deep dose equivalent, lens dose equivalent, and shallow dose equivalent may be assessed from surveys or radiation measurements for demonstrating compliance with the occupational dose limits.

*(iv)* The registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received from radiation machines or radioactive materials while employed by any other person.

*(v)* The agency may impose additional requirements for controlling occupational exposure to restrict or assess the collective dose.

(B) Dose limits for individual members of the public.

*(i)* Each registrant shall conduct operations so that:

*(I)* the total effective dose equivalent to individual members of the public from exposure to radiation from radiation machines does not exceed 0.5 rem (5 millisieverts) in a year, exclusive of the dose contribution from background radiation, exposure of patients to radiation for medical diagnosis or therapy, or to voluntary participation in medical research programs; and

*(II)* the dose in any unrestricted area from external sources does not exceed 0.002 rem (0.02 millisieverts) in any one hour.

*(ii)* If the registrant permits members of the public to have access to restricted areas, the limits for members of the public continue to apply to those individuals.

*(iii)* The agency may impose additional restrictions on radiation levels in unrestricted areas in order to restrict the collective dose.

(C) Occupational doses from other sources of radiation. Individuals who receive occupational doses from sources of radiation other than dental radiation machines may be required to comply with the requirements of §289.231(n) and (q) - (s) of this title.

(D) Instructions to workers. The registrant shall provide instructions to radiation workers before beginning initial work in restricted areas. These instructions shall include the following:

*(i)* precautions or procedures to minimize exposure;

*(ii)* the applicable provisions of agency requirements and certificates of registration for the protection of personnel from exposures to radiation occurring in such areas; and

*(iii)* the radiation worker's responsibility to report promptly to the registrant any condition that may constitute, lead to, or cause a violation of agency requirements or certificate of registration conditions, or unnecessary exposure to radiation.

(4) Facility requirements.

(A) Caution signs. Unless otherwise authorized by the agency, the standard radiation symbol prescribed shall use the colors magenta, purple or black on yellow background. The standard radiation symbol prescribed is the three-bladed design as follows:
Figure: 25 TAC §289.232(j)(4)(A)

*(i)* the cross-hatched area of the symbol is to be magenta, purple, or black; and

*(ii)* the background of the symbol is to be yellow.

(B) Posting of notices to workers.

*(i)* Each registrant shall post current copies of the following documents:

*(I)* RC Form 232-1, "Notice to Employees," or an equivalent document containing at least the same wording as RC Form 232-1; and
Figure: 25 TAC §289.232(j)(4)(B)(i)(I)

*(II)* a notice that describes the following documents and states where the documents may be examined:

(-a-) a copy of this section;

(-b-) the certificate of registration and conditions or documents incorporated into the certificate of registration by reference and amendments thereto;

(-c-) the operating procedures applicable to work under the certificate of registration; and

(-d-) any notice of violation, if applicable, involving radiological working conditions, or order issued in accordance with subsections (b) and (l)(3) of this section and documentation of the corrections of any violations.

*(ii)* Documents, notices, or forms posted in accordance with this subsection shall:

*(I)* appear in an area visible to all workers to permit individuals engaged in work under the certificate of registration to

observe the documents on the way to or from any particular work location to which the document applies;

*(II)* be conspicuous; and

*(III)* be replaced if defaced or altered.

(C) Posting requirements. The registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA."

(D) Exceptions to posting requirements. Registrants are exempt from the posting of the radiation area requirements in subparagraph (C) of this paragraph if the operator has continuous surveillance and access control of the radiation area.

(E) Security and control of radiation machines.

*(i)* The registrant shall establish a protocol to ensure radiation machines are secure from unauthorized removal.

*(ii)* The registrant shall use devices and administrative procedures to prevent unauthorized use of radiation machines.

*(iii)* Any person using hand-held dental radiation machines shall ensure proper storage of the unit to include:

*(I)* securing the unit against theft or unauthorized use; and

*(II)* storing the unit in locked cabinets, storage rooms or work areas when not under immediate supervision of authorized users.

(5) Radiation machine requirements.

(A) Technique chart.

*(i)* A technique chart relevant to the particular radiation machine shall be provided or electronically displayed near the control panel and used by all operators.

*(ii)* Technique and exposure indicators.

*(I)* The technique factors to be used during an exposure shall be indicated before the exposure begins except:

(-a-) when automatic exposure controls are used, in which case the technique factors that are set before the exposure shall be indicated; or

(-b-) unless prevented by the design of the certified radiation machine.

*(II)* On radiation machines having fixed technique factors, the requirement of subclause (I) of this clause may be met by permanent markings.

*(III)* The x-ray control shall provide visual indication of the production of x-rays. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

*(IV)* The indicated technique factors shall be accurate to within manufacturer's specifications. If these specifications are not available from the manufacturer, the factors shall be accurate to within plus or minus 10% of the indicated setting.

(B) Labeling radiation machines. Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner that cautions individuals that radiation is produced when it is energized. This label shall be affixed in a clearly visible location on the face of the radiation machine.

(C) Mechanical support of tube head. The tube housing assembly shall be adjusted to remain stable during an exposure unless tube housing movement is a designed function of the radiation machine.

(D) Battery charge indicator. On battery-powered x-ray generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(E) Beam quality. The following requirements apply to beam quality.

*(i)* Half-value layer.

*(I)* The half-value layer of the useful beam for a given x-ray tube potential shall not be less than the values shown in the following table. If it is necessary to determine such half-value layer at an x-ray tube potential that is not listed in the table, linear interpolation may be made.

Figure: 25 TAC §289.232(j)(5)(E)(i)(I)

*(II)* For capacitor energy storage equipment, compliance with the requirements of this subparagraph shall be determined with the maximum quantity of charge per exposure.

*(ii)* Filtration controls.

*(I)* For radiation machines that have variable kilovolt peak and variable filtration for the useful beam, a device shall link the kilovolt peak selector with the filters and shall prevent an exposure unless the minimum amount of filtration required by clause (i) of this subparagraph is in the useful beam for the given kilovolt peak that has been selected.

*(II)* Any other radiation machine having removable filters shall be required to have the minimum amount of filtration as required by clause (i)(I) of this subparagraph permanently located in the useful beam during each exposure.

(F) Multiple tubes. Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes that have been selected shall be clearly indicated before initiation of the exposure. This indication shall be both on the x-ray control panel and at or near the tube housing assembly that has been selected.

(G) X-ray control. An x-ray control shall be incorporated into each radiation machine such that an exposure can be terminated by the operator at any time, except for exposures of 0.5 second or less. The exposure switch shall be of the continuous pressure type.

(H) Radiation machines needing correction or repair. The correction or repair shall begin within 30 days following the failure and the registrant shall perform or cause to be performed the correction or repair according to a designated plan. Correction or repair shall be completed no longer than 90 days from discovery unless authorized in writing by the agency.

(I) Records of radiation machine corrections or repairs. The registrant shall maintain records of corrections or repairs and any tests, measurements or numerical readings listed in subparagraph (J) of this paragraph in accordance with subsection (k)(2) of this section for inspection by the agency.

(J) Equipment performance evaluations (EPE).

*(i)* For all dental radiation machines, the registrant shall perform, or cause to be performed, EPE tests for each item specified in clauses (v) - (xi) of this subparagraph as follows:

*(I)* within 30 days after initial installation of radiation machines:

*(II)* within 30 days after reinstallation of a radiation machine; and

*(III)* within 30 days after repair of a radiation machine component that would affect the radiation output that includes, but is not limited to, the timer, tube, and power supply.

*(ii)* Frequency of EPE. For x-ray and CT systems, an EPE shall be performed at the frequency listed in the following table. Figure: 25 TAC §289.232(j)(5)(J)(ii)

*(iii)* Records of the EPE results shall be available for inspection by the agency and shall include the following:

*(I)* measurements and numerical readings;

*(II)* indication of pass or fail for each test; and

*(III)* maintenance by the registrant in accordance with subsection (k)(2) of this section for inspection by the agency.

*(iv)* Radiation machines needing correction or repair. If a radiation machine requires correction or repair following an EPE, the correction or repair shall begin within 30 days following the failure and the registrant shall perform or cause to be performed the correction or repair according to a designated plan. Correction or repair shall be completed no longer than 90 days from discovery unless authorized in writing by the agency.

*(v)* Timer.

*(I)* The accuracy of the timer shall meet the manufacturer's specifications. If the manufacturer's specifications are not obtainable, the timer accuracy shall be plus or minus 10% of the indicated time with testing performed at 0.5 second.

*(II)* Means shall be provided to terminate the exposure at a preset time interval, a preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. In addition, it shall not be possible to make an exposure when the timer is set to a "zero" or "off" position if either position is provided.

*(vi)* Exposure reproducibility. When all technique factors are held constant, including control panel selections associated with automatic exposure control systems, the coefficient of variation of exposure for both manual and automatic exposure control systems shall not exceed 0.05. This requirement applies to clinically used techniques.

*(vii)* Kilovolt peak. If the registrant possesses documentation of the appropriate manufacturer's kilovolt peak specifications, the radiation machine shall meet those specifications. If the registrant does not possess documentation of the appropriate manufacturer's kilovolt peak specifications, the indicated kilovolt peak shall be accurate to within plus or minus 10% of the indicated settings. For radiation machines with fewer than three fixed kilovolt peak settings, the radiation machine shall be checked at those settings.

*(viii)* Tube stability. The x-ray tube shall remain physically stable during exposures. In cases where tubes are designed to move during exposure, the registrant shall assure proper and free movement of the radiation machine.

*(ix)* Collimation. Field limitation shall meet the requirements of paragraphs (9) and (10) of this subsection.

*(x)* Entrance exposure limits (air kerma limits) for dental facilities. The in-air exposure (entrance air kerma) for an adult bite wing view shall be determined from the exposure technique used by the registrant for the average adult patient. The in-air exposure (entrance air kerma) for intraoral (bite wing) dental radiography shall not exceed the following entrance exposure limits (air kerma limits): Figure: 25 TAC §289.232(j)(5)(J)(x)

*(xi)* Measurements of the radiation output for a radiation machine. Measurements of the radiation output for a radiation machine shall be performed with a calibrated dosimetry system in accordance with the following.

*(I)* The dosimetry system calibration shall be traceable to a national standard.

*(II)* Dosimetry systems shall be calibrated within 24 months from the date of the prior calibration.

*(xii)* Record of dosimetry system calibration. The registrant shall verify all dosimetry equipment meets the requirements of clause (xi) of this subparagraph.

(6) Dental research.

(A) Any research using radiation machines on humans shall be approved by an Investigational Review Board (IRB) as required by Title 45, CFR, Part 46, and Title 21, CFR, Part 56. The IRB shall include at least one licensed dentist to direct any use of radiation in accordance with this section.

(B) Facilities with radiation machines with investigational device exemptions that are involved in clinical studies shall comply with primary regulations that govern the conduct of clinical studies and that apply to the manufacturers, sponsors, clinical investigators, institutional review boards, and the medical device. These regulations include the following:

*(i)* 21 CFR, Part 812, Investigational Device Exemptions;

*(ii)* 21 CFR, Part 50, Protection of Human Subjects;

*(iii)* 21 CFR, Part 56, Institutional Review Boards;

*(iv)* 21 CFR, Part 54, Financial Disclosure by Clinical Investigators; and

*(v)* 21 CFR, Part 820, Subpart C, Design Controls of the Quality System Regulation.

(7) Educational facilities. Facilities conducting training using non-humans are held to all the requirements of this section except for paragraph (5)(J) of this subsection concerning EPE and for paragraphs (12) and (13) of this subsection concerning image processing.

(8) Certified radiation machines for dental facilities. The registrant shall not make, nor cause to be made, any modification of components or installations of components certified in accordance with the United States Food and Drug Administration Title 21, CFR, Part 1020, "Performance Standards for Ionizing Radiation Emitting Products," as amended, in any manner that could cause the installations or the components to fail to meet the requirements of the applicable parts of the standards specified in Title 21, CFR, Part 1020, except where a variance has been granted by the Director, Center for Devices and Radiological Health, United States Food and Drug Administration. A copy of the variance shall be maintained by the registrant in accordance with subsection (k)(2) of this section for inspection by the agency. All modifications of components or installation of components must be approved by the manufacturer.

(9) Additional requirements for dental intraoral radiation machines.

(A) Source-to-skin distance. Radiation machines designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance to not less than:

*(i)* 18 centimeters if operable above 50 kilovolt peak; or

*(ii)* 10 centimeters if not operable above 50 kilovolt peak.

(B) Field limitation. Radiation machines designed for use with an intraoral image receptor shall be provided with means to limit the x-ray beam such that:

*(i)* if the minimum source-to-skin distance is 18 centimeters or more, the x-ray field at the minimum source-to-skin distance shall be restricted to a dimension of no more than seven centimeters; and

*(ii)* if the minimum source-to-skin distance is less than 18 centimeters, the x-ray field at the minimum source-to-skin distance shall be restricted to a dimension of no more than six centimeters.

(10) Additional requirements for dental extraoral radiation machines.

(A) Dental panoramic radiation machines shall be provided with means to restrict the x-ray beam to the following:

*(i)* the imaging slit in the transverse axis; and

*(ii)* no more than a total of 0.5 inches larger than the imaging slit in the vertical axis.

(B) All other dental extraoral radiation machines (e.g., cephalometric) shall be provided with means to restrict the x-ray field to the image receptor. The x-ray field shall not exceed the image receptor by more than:

*(i)* 2.0% of the source-to-image receptor distance for the length or width of the image receptor for rectangular collimation; or

*(ii)* 2.0% of the source-to-image receptor distance for the diagonal of the image receptor for circular or polygon collimation.

(11) Additional operational controls.

(A) When a patient or image receptor must be held in position during radiography, mechanical supporting or restraining devices shall be used when the exam permits except in individual cases in which the registrant has determined that the holding devices are contraindicated.

(B) The registrant's written operating and safety procedures required by paragraph (2) of this subsection shall include the following:

*(i)* a list of circumstances in which mechanical holding devices cannot be routinely utilized; and

*(ii)* a procedure used for selecting an individual to hold or support the patient or image receptor.

(C) The operator position during the exposure shall be such that the operator's exposure is as low as reasonably achievable and the operator is a minimum of six feet from the useful beam or behind a protective barrier. The operator shall maintain verbal, aural, and visual contact with the patient.

(12) Automatic and manual film processing for dental facilities and mobile dental services.

(A) Films shall be developed in accordance with the time-temperature relationships recommended by the film manufacturer. The specified developer temperature for automatic processing and the time-temperature chart for manual processing shall be posted in the processing area. If the registrant determines an alternate time-temperature relationship is more appropriate for a specific facility, that time-temperature relationship shall be documented and posted.

(B) Chemicals shall be replaced according to the chemical manufacturer or supplier's recommendations or at an interval not to exceed three months.

(C) Darkroom light leak tests shall be performed at intervals not to exceed six months.

(D) Lighting in the film processing/loading area shall be maintained with the filter, bulb wattage, and distances recommended by the film manufacturer for that film emulsion or with products that provide an equivalent level of protection against fogging.

(E) Corrections or repairs of the light leaks or other deficiencies in subparagraphs (B) - (D) of this paragraph shall be initiated within 72 hours after discovery and completed no longer than 15 days from detection of the deficiency unless a longer time is authorized by the agency. Records of the corrections or repairs shall include the date and initials of the individual performing these functions and the registrant shall maintain the records in accordance with subsection (k)(2) of this section for inspection by the agency.

(F) Documentation of the items in subparagraphs (B), (C), and (E) of this paragraph shall be maintained at the site where performed and shall include the date and initials of the individual completing these items. These records shall be made and maintained in accordance with subsection (k)(2) of this section for inspection by the agency.

(13) Alternative processing systems. Users of daylight processing systems, laser processors, self-processing film systems, or other alternative processing systems shall follow manufacturer's recommendations for image processing. Documentation that the registrant is following manufacturer's recommendations shall include the date and initials of the individual completing the document and shall be made and maintained at the authorized use location where performed in accordance with subsection (k)(2) of this section for inspection by the agency.

(14) Digital imaging acquisition systems.

(A) Users of digital imaging acquisition systems shall follow quality assurance/quality control (QA/QC) protocol for digital imaging established by the manufacturer.

*(i)* The registrant shall include the protocols established in paragraph (2) of this subsection in its operating and safety procedures.

*(ii)* The registrant shall document the frequency at which the quality assurance/quality control protocol is performed. Documentation shall:

*(I)* include the date and initials of the individual completing the document and the images acquired; and

*(II)* be maintained and available at the authorized use location where performed in accordance with subsection (k)(2) of this section for inspection by the agency.

(B) If a protocol cannot be established by the manufacturer, it shall be developed and implemented by the registrant.

*(i)* The QA/QC protocol, as developed and implemented by the registrant, shall include image quality testing for, but not limited to, spatial resolution, noise, artifacts and contrast by using a commercially purchased testing tool or an inanimate object of at least three varying densities.

*(I)* Images shall be acquired with each x-ray image receptor at an interval not to exceed three months.

*(II)* Test images shall be compared to previous test images to assess degradation of image quality.

*(III)* If a radiation machine or components of the digital imaging acquisition system require correction or repair following a quality test, the correction or repair shall begin within 30 days following the failure and the registrant shall perform or cause to be performed the correction or repair according to a designated plan. Correction or repair shall be completed no longer than 90 days from discovery unless authorized in writing by the agency.

*(ii)* The registrant shall include the protocols established in paragraph (2) of this subsection in its operating and safety procedures.

*(iii)* The registrant shall document the frequency at which the quality assurance/quality control protocol is performed. Documentation shall:

*(I)* include the date and initials of the individual completing the document and the images acquired; and

*(II)* be maintained and available at the authorized use location where performed in accordance with subsection (k)(2) of this section for inspection by the agency.

(k) Records and reports.

(1) General provisions for records and reports.

(A) Each registrant shall maintain records at each site, including sites authorized by the certificate of registration, conditions, and records sites for mobile services. The records shall include those specified in paragraph (2) of this subsection and shall be maintained at the time interval indicated for inspection by the agency. These records may be maintained in electronic format. These records shall be accessible to radiation machine operators during working hours.

(B) All records required by this section shall be accurate and factual.

(C) Each registrant shall use the SI units gray, sievert, and coulomb per kilogram, or the special units rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this section.

(D) The registrant shall make a clear distinction among the quantities entered on the records required by this section, such as, total effective dose equivalent, shallow dose equivalent, lens dose equivalent, and deep dose equivalent.

(E) Each record required by this section shall be legible throughout the specified retention period.

(F) The record shall be the original, a reproduced copy, or a microform, if the authorized personnel authenticate the copy or microform and that the microform is capable of producing a clear copy throughout the required retention period.

(G) The record may also be stored in electronic format with the capability for producing legible, accurate, and complete records during the required retention period.

(H) The registrant shall maintain adequate safeguards against tampering with and loss of records.

(I) Copies of records required in subsections (i)(5)(I) and (J), (j)(5)(J), and (j)(12)(F) of this section and by certificate of registration condition that are relevant to operations at an additional authorized use location shall be maintained at that location in addition to the main site specified on a certificate of registration in accordance with subsection (k)(2) of this section.

(J) Subject to the limitations provided in the Texas Public Information Act, Government Code, Chapter 552, all information and data collected, assembled, or maintained by the agency are public records open to inspection and copying during regular office hours.

(K) Any person who submits written information or data to the agency and requests that the information be considered confidential, privileged, or otherwise not available to the public under the Texas Public Information Act, shall justify such request in writing, including statutes and cases where applicable, addressed to the agency.

*(i)* Documents containing information that is claimed to fall within an exception to the Texas Public Information Act shall be marked to indicate that fact. Markings shall be placed on the document on origination or submission.

*(I)* The words "NOT AN OPEN RECORD" shall be placed conspicuously at the top and bottom of each page containing information claimed to fall within one of the exceptions.

*(II)* The following wording shall be placed at the bottom of the front cover and title page, or first page of text if there is no front cover or title page:
Figure: 25 TAC §289.232(k)(1)(K)(i)(II)

*(ii)* The agency requests, whenever possible, that all information submitted under the claim of an exception to the Texas Public Information Act be extracted from the main body of the application and submitted as a separate annex or appendix to the application.

*(iii)* Failure to comply with any of the procedures that are described in clauses (i) and (ii) of this subparagraph may result in all information in the agency file being disclosed upon an open records request.

(L) The agency will determine whether information falls within one of the exceptions to the Texas Public Information Act. The agency will determine whether there has been a previous determination that the information falls within one of the exceptions to the Texas Public Information Act. If there has been no previous determination and the agency believes that the information falls within one of the exceptions, an opinion of the Attorney General will be requested. If the agency agrees in writing to the request, the information shall not be open for public inspection unless the Attorney General's office subsequently determines that it is not an exception.

(M) Requests for information.

*(i)* All requests for open records information shall be in writing and refer to documents currently in possession of the agency.

*(ii)* The agency will determine whether the information may be released or whether it falls within an exception to the Texas Public Information Act.

*(I)* The agency may take a reasonable period to determine whether information falls within one of the exceptions to the Texas Public Information Act.

*(II)* If the information is determined to be public, it will be presented for inspection and copies of documents will be furnished within a reasonable period. A fee will be charged to recover agency costs for copies.

*(iii)* Original copies of public records may not be removed from the agency. Under no circumstances shall material be removed from existing records.

(2) Records requirements.

(A) Each registrant shall maintain the following records at each site, including authorized records sites for mobile services, at the time intervals specified and make available to the agency for inspection. The records may be maintained in electronic format.
Figure: 25 TAC §289.232(k)(2)(A)

(B) For radiation machines authorized for mobile service, copies of the records specified in the table in subparagraph (A)(iii)-(v) of this paragraph shall be maintained with the radiation machine in accordance with subparagraph (A) of this paragraph for inspection by the agency. If on-board processors are utilized, image processing records shall also be made on board in accordance with subsection (j)(12), (13), and (14) of this section and maintained in accordance with subparagraph (A) of this paragraph for inspection by the agency.

(C) For authorized records sites for mobile services, copies of the records specified in subparagraph (A)(ii) and (vi)-(xii) of this paragraph shall be maintained in accordance with subparagraph (A) of this paragraph for inspection by the agency.

(3) Reports.

(A) Reports of stolen, lost, or missing radiation machines.

*(i)* Each registrant shall report to the agency by telephone a stolen, lost, or missing radiation machine immediately after its occurrence becomes known to the registrant.

*(ii)* Within 30 days after making the telephone report, each registrant required to make a report according to clause (i) of this subparagraph shall make a written report to the agency that includes the following information:

*(I)* a description of the radiation machine involved, including the manufacturer name, model and serial number;

*(II)* a description of the circumstances under which the loss or theft occurred;

*(III)* actions that have been taken, or will be taken, to recover the radiation machine; and

*(IV)* procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of radiation machines.

*(iii)* Subsequent to filing the written report, the registrant shall also report additional information pertaining to the loss or theft within 30 days after the registrant learns of such information.

*(iv)* The registrant shall prepare any report filed with the agency in accordance with this subsection so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

(B) Reports of incidents.

*(i)* Notwithstanding other requirements for notification, each registrant shall immediately report each event involving a radiation machine possessed by the registrant that may have caused or threatens to cause an individual, except radiation administered for healing arts purposes, to receive:

*(I)* a total effective dose equivalent of 25 rems (0.25 sievert) or more;

*(II)* a lens dose equivalent of 75 rems (0.75 sievert) or more; or

*(III)* a shallow dose equivalent to the skin of the whole body or to the skin of any extremities of 250 rads (2.5 grays) or more.

*(ii)* Within 24 hours of discovery of the event, each registrant shall report to the agency each event involving loss of control of a radiation machine possessed by the registrant that may have caused, or threatens to cause an individual to receive, in a period of 24 hours:

*(I)* a total effective dose equivalent exceeding 5 rems (0.05 sievert);

*(II)* a lens dose equivalent exceeding 15 rems (0.15 sievert); or

*(III)* a shallow dose equivalent to the skin of the whole body or to the skin of any extremities exceeding 50 rems (0.5 sievert).

*(iii)* Registrants shall make the initial notification reports required by clauses (i) and (ii) of this subparagraph by telephone to the agency and shall confirm the initial notification report within 24 hours by facsimile or other electronic media to the agency.

*(iv)* The registrant shall prepare each report filed with the agency in accordance with this section so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

(C) Reports of exposures and radiation levels exceeding the limits.

*(i)* In addition to the notification required by subparagraph (B) of this paragraph, each registrant shall submit a written report within 30 days after learning of any of the following occurrences:

*(I)* incidents for which notification are required by subparagraph (B) of this paragraph;

*(II)* doses in excess of any of the following:

(-a-) the occupational dose limits for adults in subsection (j)(3)(A)(i) of this section;

(-b-) the occupational dose limits for a minor in subsection (j)(3)(A)(i)(III) of this section;

(-c-) the limits for an embryo/fetus of a declared pregnant woman in subsection (j)(3)(A)(i)(IV) and (V) of this section;

(-d-) the limits for an individual member of the public in subsection (j)(3)(B) of this section; or

(-e-) any applicable limit in the certificate of registration;

*(III)* levels of radiation in:

(-a-) a restricted area in excess of applicable limits in the certificate of registration; or

(-b-) an unrestricted area in excess of 10 times the applicable limit set forth in this section or in the certificate of registration conditions, whether or not involving exposure of any individual in excess of the limits in subsection (j)(3)(B) of this section.

*(ii)* Each report required by clause (i) of this subparagraph shall describe the extent of exposure of individuals to radiation, including, as appropriate:

*(I)* estimates of each individual's dose;

*(II)* the levels of radiation involved;

*(III)* the cause of the elevated exposures, dose rates; and

*(IV)* corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, and associated registration conditions.

*(iii)* Each report filed in accordance with clause (i) of this subparagraph shall include, for each individual exposed, the name, a unique identification number, and date of birth. With respect to the limit for the embryo/fetus in subsection (j)(3)(A)(i)(IV) and (V) of this section, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

(D) Reports to individuals of exposures.

*(i)* If applicable, radiation exposure data for an individual shall be reported to the individual as specified in this paragraph. The information reported shall include data and results obtained in accordance with requirements of this section, orders, certificate of registration conditions, as shown in records made and maintained by the registrant in accordance with this subsection. Each notification and report shall:

*(I)* be in writing;

*(II)* include appropriate identifying data such as the name of the registrant, the name of the individual, and the individual's identification number;

*(III)* include the individual's exposure information; and

*(IV)* contain the following statement: "This report is furnished to you under the provisions of the Texas Regulations for Control of Radiation, 25 Texas Administrative Code §289.232(j)(3)(A) - (C). You should preserve this report for further reference."

*(ii)* If applicable, each registrant shall provide an annual written report to advise each worker of the worker's estimated dose, received in that monitoring year, as shown in records made and maintained by the registrant in accordance with subparagraph (C) of this paragraph if:

*(I)* the individual's occupational dose exceeds 100 mrem (1 mSv) total effective dose equivalent or 100 mrem (1 mSv) to any individual organ or tissue; or

*(II)* the individual requests his or her annual dose report in writing.

*(iii)* When a registrant is required in accordance with subparagraphs (B) and (C) of this paragraph to report to the agency any exposure of an identified occupationally exposed individual, or an identified member of the public, to radiation, the registrant shall also notify the individual and provide the individual with a copy of the report submitted to the agency, including the information required by clause (i) of this subparagraph. Such reports shall be transmitted no later than the transmittal to the agency.

(l) Compliance and hearing procedures.

(1) Inspections. The agency may enter public or private property at reasonable times to determine whether, in a matter under the agency's jurisdiction, there is compliance with the Act, the requirements of this section, certificate of registration conditions, and orders issued by the agency.

(A) Each registrant shall perform, upon instructions from the agency, or shall permit the agency to perform such reasonable surveys, as the agency deems appropriate or necessary, including, but not limited to, surveys of:

*(i)* radiation machines;

*(ii)* facilities where radiation machines are used; and

*(iii)* other radiation machines and devices used in connection with utilization of radiation machines.

(B) The routine inspection interval for dental facilities is four years. On-site inspections and remote inspections may be alternated as determined by the agency. The inspection interval specified is based upon the average number of health-related violations per inspection, as determined from compliance history data. Registrant's having certificates of registration authorizing multiple radiation machine use categories will be inspected on-site at the most frequent interval specified for the radiation machine uses authorized.

*(i)* Notwithstanding the inspection interval specified in this subparagraph, the agency may inspect registrants more frequently due to:

*(I)* the persistence or severity of violations found during an inspection;

*(II)* investigation of an incident or complaint concerning the facility;

*(III)* a request for an inspection by a worker in accordance with paragraph (2) of this subsection;

*(IV)* any change in a facility or radiation machine that might cause a significant increase in radiation output or hazard; or

*(V)* a mutual agreement between the agency and registrant.

*(ii)* The agency will conduct inspections of dental radiation machines in a manner designed to cause as little disruption of a dental practice as is practicable.

(C) On-site Inspections.

*(i)* Each registrant shall afford to the agency at all reasonable times opportunity to inspect materials, radiation machines, activities, facilities, premises, and records in accordance with this section.

*(ii)* During an inspection, agency inspectors may obtain and retain paper or electronic copies of requested documentation in accordance with this section.

*(iii)* Each registrant shall make available to the agency for inspection records made and maintained in accordance with this section.

*(iv)* Agency inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of agency regulations and certificates of registration to the extent the inspectors deem necessary for the conduct of an inspection.

*(v)* An employee who routinely is engaged in work under control of the registrant, operating the radiation machines for healing arts purposes, shall be made available to operate the radiation machines at the time of the inspection and engage in the inspection process.

*(vi)* Notwithstanding the other provisions of this section, agency inspectors are authorized to refuse to permit accompaniment by any individual who interferes, delays, or causes to be delayed an inspection.

(D) For remote inspection of dental radiation machines, each registrant shall:

*(i)* respond to a request from the agency for a remote inspection;

*(ii)* complete the remote inspection forms in accordance with the instructions included with the forms; and

*(iii)* return to the agency the completed remote inspection forms, including documentation of the most recent EPE performed in accordance with subsection (j)(5)(J) of this section and an inventory in accordance with subsection (i)(5)(I) of this section by the deadline indicated on the forms.

(E) During the course of an inspection, any worker may privately inform the inspectors, either verbally or in writing, any past or present condition which that individual has reason to believe may have contributed to or caused any violation of the Act, the requirements in this section, certificate of registration conditions, or any unnecessary exposure of an individual to radiation from any radiation machine source of radiation under the registrant's control. Any such notice in writing shall comply with the requirements of paragraph (2) of this subsection.

(F) The provisions of subparagraph (E) of this paragraph shall not be interpreted as authorization to disregard instructions in accordance with subsection (j)(3)(D) of this section.

(2) Complaints. Any worker or representative of a worker who believes that a violation of the Act, the requirements of this section, or certificate of registration conditions exists or has occurred in work under a certificate of registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the agency. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and the worker or representative of the worker shall sign the notice. A copy shall be provided to the registrant by the agency no later than at the time of inspection except that, upon the request of the worker giving such notice, the worker's name and the name of individual referred to therein shall not appear in such copy or on any record published, released, or made available by the agency, except for good cause shown.

(A) If, upon receipt of such notice, the agency determines that the request meets the requirements set forth in this paragraph, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, an inspection shall be made as soon as practicable to determine if such alleged violation exists or has occurred. Inspections in accordance with this section need not be limited to matters referred in the request.

(B) No registrant, contractor or subcontractor of a registrant shall discharge or in any manner discriminate against any worker because of the following:

*(i)* such worker has filed any request or instituted or caused to be instituted any proceeding under this section;

*(ii)* such worker has testified or is about to testify in any such proceeding; or

*(iii)* because of the exercise by such worker on behalf of that individual or others of any option afforded by this section.

(C) Inspections not warranted.

*(i)* If the agency determines, with respect to a request under subparagraphs (A) and (B) of this paragraph, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the agency shall notify the requestor in writing of such determination. The requestor may obtain review of such determination in accordance with the provisions of the Act and the Government Code, Chapters 2001 and 2002.

*(ii)* If the agency determines that an inspection is not warranted because the requirements of this paragraph have not been met, the agency shall notify the requestor in writing of such determination. Such determination shall be without prejudice to the filing of a new request meeting the requirements of this paragraph.

(D) Agency inspectors are required to have special training in the design and uses of medical x-ray equipment. Inspector training requirements and standards will be detailed in the Radiation Control Program policies and procedures manual.

(3) Hearing and enforcement procedures.

(A) Violations.

*(i)* A court injunction or agency order may be issued prohibiting any violation of any provision of the Act or any requirement of this section or order issued thereunder.

*(ii)* Any person who violates any provision of the Act or any requirement of this section or order issued thereunder may be subject to civil or administrative penalties.

*(iii)* Such person may also be guilty of a misdemeanor and upon conviction, may be punished by fine or imprisonment or both, as provided by law.

(B) Denial of an application for a certificate of registration.

*(i)* When the agency contemplates denial of an application for certificate of registration as outlined in subparagraph (A)(i) of this paragraph, the registrant shall be afforded the opportunity for a hearing. Notice of the denial shall be delivered to the registrant by mail, addressed to the last known address of the registrant.

*(ii)* Any applicant or registrant against whom the agency contemplates denial of an application may request a hearing by submitting a written request to the director within 30 days after service of the notice or date of mailing.

*(I)* The written request for a hearing shall contain the following:

(-a-) statement requesting a hearing; and

(-b-) name and address of the applicant or registrant.

*(II)* Failure to submit a written request for a hearing within 30 days after notice is sent will render the agency action final.

(C) Compliance procedures for registrants and other persons.

*(i)* A registrant or other person who commits a violation will be issued a notice of violation. The person receiving the notice shall provide the agency with a written statement and supporting documentation by the date stated in the notice describing the following:

*(I)* steps taken by the person and the results achieved;

*(II)* corrective steps to be taken to prevent recurrence; and

*(III)* the date when full compliance was or is expected to be achieved. The agency may require responses to notices of violation to be under oath.

*(ii)* The terms and conditions of all certificates of registration shall be subject to amendment or modification. A certificate of registration may be modified, suspended, or revoked by reason of amendments to the Act, or for violation of the Act, the requirements of this section, a condition of the certificate of registration, or an order of the agency.

*(iii)* Any certificate of registration may be modified, suspended, or revoked in whole or in part, for any of the following:

*(I)* any material false statement in the application or any statement of fact required in accordance with provisions of the Act;

*(II)* conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of registration on an original application;

*(III)* violation of, or failure to observe any of the applicable terms and conditions of the Act, this section, or of the certificate of registration, or order of the agency; or

*(IV)* existing conditions that constitute a substantial threat to the public health or safety or the environment.

*(iv)* If another state or federal entity takes an action such as modification, revocation, or suspension of the certificate of registration, the agency may take a similar action against the registrant.

*(v)* When the agency determines that the action provided for in clause (viii) of this subparagraph or subparagraph (D) of this paragraph is not to be taken immediately, the agency may offer the registrant an opportunity to attend an informal conference to discuss the following with the agency:

*(I)* methods and schedules for correcting the violations; or

*(II)* methods and schedules for showing compliance with applicable provisions of the Act, the requirements of this section, certificate of registration conditions, or any orders of the agency.

*(vi)* Notice of any informal conference shall be delivered by personal service, or certified mail, addressed to the last known address. An informal conference is not a prerequisite for the action to be taken in accordance with clause (viii) of this subparagraph or subparagraph (D) of this paragraph.

*(vii)* Except in cases in which the occupational and public health or safety requires otherwise, no certificate of registration shall be suspended or revoked unless, before the institution of proceedings therefore, facts or conduct that may warrant such action shall have been called to the attention of the registrant in writing, and the registrant shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

*(viii)* When the agency contemplates modification, suspension, or revocation of the certificate of registration, the registrant shall be afforded the opportunity for a hearing. Notice of the contemplated action, along with a complaint, shall be given to the registrant by personal service or certified mail, addressed to the last known address.

*(ix)* Any applicant or registrant against whom the agency contemplates an action described in clause (viii) of this subparagraph may request a hearing by submitting a written request to the director within 30 days after service of the notice.

*(I)* The written request for a hearing shall contain the following:

(-a-) statement requesting a hearing;

(-b-) name, address, and identification number of the registrant against whom the action is being taken.

*(II)* Failure to submit a written request for a hearing within 30 days after notice is sent will render the agency action final.

(D) Assessment of administrative penalties.

*(i)* When the agency determines that monetary penalties are appropriate, proposals for assessment of and hearings on administrative penalties shall be made in accordance with Health and Safety Code, §401.384; Title 1, Texas Administrative Code, Chapter 155; and applicable sections of the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title.

*(ii)* Assessment of administrative penalties shall be based on the following criteria:

*(I)* the seriousness of the violations;

*(II)* previous compliance history;

*(III)* the amount necessary to deter future violations;

*(IV)* efforts to correct the violations; and

*(V)* any other mitigating or enhancing factors.

*(iii)* Application of administrative penalties. The agency may impose differing levels of penalties for different severity level violations and different classes of users as follows.

*(I)* Administrative penalties may be imposed for severity level I and II violations. Administrative penalties may be imposed for severity level III, IV, and V violations when the violations are combined with those of higher severity levels or for repeated violations.

*(II)* The following Tables A and B show the base administrative penalties.
Figure: 25 TAC §289.232(l)(3)(D)(iii)(II)

*(III)* Adjustments to the percentages of base amounts in Table B may be made for the presence or absence of the following factors:

(-a-) prompt identification and reporting;
(-b-) corrective action to prevent recurrence;
(-c-) compliance history;
(-d-) prior notice of similar event;
(-e-) multiple occurrences; and
(-f-) negligence that resulted in or increased adverse effects.

*(IV)* The penalty for each violation may be in an amount not to exceed $10,000 a day for a person who violates the Act or requirements of this section, order, or certificate of registration issued in accordance with the Act. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

*(iv)* The agency may conduct settlement negotiations.

(E) Severity levels of violations for registrants or other persons.

*(i)* Violations for registrants or other persons shall be categorized by one of the following severity levels.

*(I)* Severity level I are violations that are most significant and may have a significant negative impact on occupational or public health and safety or on the environment.

*(II)* Severity level II are violations that are very significant and may have a negative impact on occupational or public health and safety or on the environment.

*(III)* Severity level III are violations that are significant and which, if not corrected, could threaten occupational or public health and safety or the environment.

*(IV)* Severity level IV are violations that are of more than minor significance, but if left uncorrected, could lead to more serious circumstances.

*(V)* Severity level V are violations that are of minor safety or environmental significance.

*(ii)* Criteria to elevate or reduce severity levels.

*(I)* Severity levels may be elevated to a higher severity level for the following reasons:

(-a-) more than one violation resulted from the same underlying cause;

(-b-) a violation contributed to or was the consequence of the underlying cause, such as a management breakdown or breakdown in the control of registered activities;

(-c-) a violation occurred multiple times between inspections;

(-d-) a violation was willful or grossly negligent;

(-e-) compliance history; or

(-f-) other mitigating factors.

*(II)* Severity levels may be reduced to a lower level for the following reasons:

(-a-) the registrant identified and corrected the violation before the agency inspection;

(-b-) the registrant's actions corrected the violation and prevented recurrence; or

(-c-) other mitigating factors.

*(iii)* Examples of severity levels. Examples of severity levels are available upon request to the agency.

(F) Impoundment of radiation machines. Radiation machines shall be subject to impounding in accordance with Health and Safety Code, §401.068 and this paragraph.

*(i)* In the event of an emergency, the agency shall have the authority to impound or order the impounding of radiation machines possessed by any person not equipped to observe or failing to observe the provisions of the Act, or any requirements of this section, certificate of registration conditions, or orders issued by the agency. The agency shall submit notice of the action to be published in the *Texas Register* no later than 30 days following the end of the month in which the action was taken.

*(ii)* At the agency's discretion, the impounded radiation machines may be disposed of by:

*(I)* returning the radiation machine to a properly registered owner, upon proof of ownership, who did not cause the emergency;

*(II)* releasing the radiation machine as evidence to police or courts;

*(III)* returning the radiation machine to a registrant after the emergency is over and settlement of any compliance action; or

*(IV)* selling, destroying or other disposition within the agency's discretion.

*(iii)* If agency action is necessary to protect the public health and safety, no prior notice need be given the owner or possessor. If agency action is not necessary to protect the public health and safety, the agency will give written notice to the owner or the possessor of the impounded radiation machine of the intention to dispose of the radiation machine. Notice shall be the same as provided in subparagraph (C)(viii) of this paragraph. The owner or possessor shall have 30 days from the date of personal service or mailing to request a hearing under Title 1, Texas Administrative Code, Chapter 155, and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title, and in accordance with subparagraph (C)(ix) of this paragraph, concerning the intention of the agency. If no hearing is requested within that period, the agency may take the contemplated action, and such action is final.

*(iv)* Upon agency disposition of a radiation machine, the agency may notify the owner or possessor of any expense the agency may have incurred during the impoundment or disposition and request reimbursement. If the amount is not paid within 60 days from the date of notice, the agency may request the Attorney General to file suit against the owner or possessor for the amount requested.

*(v)* If the agency determines from the facts available that an impounded radiation machine is abandoned, with no reasonable evidence showing its owner or possessor, the agency may make such disposition of the radiation machine as it sees fit.

(G) Emergency orders.

*(i)* When an emergency exists requiring immediate action to protect the public health or safety or the environment, the agency may, without notice or hearing, issue an order citing the existence of such emergency and require that certain actions be taken as the agency directs to meet the emergency. No later than 30 days following the end of the month in which the action was taken, the agency shall submit notice of the action for publication in the *Texas Register*. The action taken will remain in full force and effect unless and until modified by subsequent action of the agency.

*(ii)* An emergency order takes effect immediately upon service.

*(iii)* Any person receiving an emergency order shall comply immediately.

*(iv)* The person receiving the order shall be afforded the opportunity for a hearing on an emergency order. Notice of the action, along with a complaint, shall be given to the person by personal service or certified mail, addressed to the last known address. A hearing shall be held on an emergency order if the person receiving the order submits a written request to the director within 30 days after the date of the order.

*(I)* The hearing shall be held not less than 10 days nor more than 20 days after receipt of the written application for hearing.

*(II)* At the conclusion of the hearing and after the proposal for decision is made as provided in the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, the commissioner shall take one of the following actions:

(-a-) determine that no further action is warranted;

(-b-) amend the certificate of registration;

(-c-) revoke or suspend the certificate of registration;

(-d-) rescind the emergency order; or

(-e-) issue such other order as is appropriate.

*(III)* The application and hearing shall not delay compliance with the emergency order.

(H) Miscellaneous provisions.

*(i)* Computation of time. A time established by the requirements of this section shall begin on the first day after the event that invokes the time. When the last day of the period falls on a Saturday, Sunday, or state or federal holiday, the time shall end on the next day that is not a Saturday, Sunday, or state or federal holiday. The time shall expire at 5:00 p.m. of the last day of the computed time.

*(ii)* Hearing location. Hearings will be held at the offices of the State Office of Administrative Hearings in Austin unless the administrative law judge specifies another location.

*(iii)* Non-party witness and mileage fees.

*(I)* A witness or deponent who is not a party (or an employee, agent, or representative of a party) and who is subpoenaed or otherwise compelled to attend an agency hearing or a proceeding to give a deposition, or to produce books, records, papers, accounts, documents, or other objects necessary and proper for the purposes of the hearing or proceeding may receive reimbursement for transportation and other costs at rates established by the current Appropriations Act for state employees.

*(II)* The person requesting the attendance of the witness or deponent shall deposit with the agency the funds estimated to accrue in accordance with subclause (I) of this clause when filing a motion for the issuance of a subpoena or a commission to take a deposition.

*(iv)* Service. A return of service by the person who performed personal service, postal return receipt, or proof of mailing to the last known address shall be conclusive evidence of service.

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 June 5, 2019.

TRD-201901687
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: June 25, 2019
Proposal publication date: January 11, 2019
For further information, please call: (512) 834-6659

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# PART 7. TEXAS MEDICAL DISCLOSURE PANEL

## CHAPTER 601. INFORMED CONSENT

**25 TAC §601.4, §601.8**

The Texas Medical Disclosure Panel (panel) adopts amendments to §601.4 and §601.8, concerning informed consent. The amendments to §601.4 and §601.8 are adopted with changes to the proposed text as published in the February 22, 2019, issue of the *Texas Register* (44 TexReg 803) and will be republished.

BACKGROUND AND JUSTIFICATION

These amendments are in accordance with the Texas Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. Section 601.4 contains the Disclosure and Consent form for Medical Care and Surgical Procedures. Section 601.8 contains the Disclosure and Consent for Hysterectomy form.

SECTION-BY-SECTION SUMMARY

Amendments to §601.4 amend the Disclosure and Consent form for Medical Care and Surgical Procedures to update and clarify language.

Amendments to §601.8 amend the Disclosure and Consent for Hysterectomy form to update and clarify language.

PUBLIC COMMENT

The 30-day comment period ended March 25, 2019.

During this period, the panel received comments regarding the proposed rules from twelve commenters, Baylor Scott & White Health, Texas Hospital Association, Texas Medical Association, and nine individuals.

Comments: Concerning §601.4, two commenters suggested changing the title of the form from "Medical Treatment and Surgical Procedures" to "Medical and Surgical Treatment/Procedure(s)".

Response: The panel partially agreed with the commenters and changed the title of the form to read "Medical Care and Surgical Procedures".

Comments: Concerning §601.4, two commenters suggested adding "Name of Physician Explaining the Procedure" to the form.

Response: The panel disagreed with the commenter and the language was not added. No change was made as a result of this comment.

Comments: Concerning §601.4, a commenter suggested changing the title of the form from "Medical Treatment and Surgical Procedures" to "Medical Care and Surgical Procedures".

Response: The panel agreed with the commenter and changed the title of the form to read "Medical Care and Surgical Procedures".

Comments: Concerning §601.4, a commenter suggested retaining language that had previously been removed which read "This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the procedure".

Response: The panel disagreed with the commenter and the language was not added. No change was made as a result of this comment.

Comments: Concerning §601.4, a commenter suggested changing "3) the related risks" to "3) the risks related to the medical care or surgical procedure" in the form.

Response: The panel partially agreed with the commenter and changed the language to read "3) risks related to this care/procedure" in the first paragraph of the form.

Comments: Concerning §601.4, a commenter stated that language in the form included under the section titled "Risks Related to the Treatment/Procedure(s)" is unclear.

Response: The panel partially agreed with the commenter and revised some of the language.

Comments: Concerning §601.4, a commenter suggested retaining language in the form that had previously been removed related to "Granting of Consent for This Treatment/Procedure(s)".

Response: The panel disagreed with the commenter and the language was not added. No change was made as a result of this comment.

Comments: Concerning §601.4 and §601.8, a commenter suggested retaining language that had previously been removed related to discovery of other or different conditions by the physician which may require additional procedures, and the use of blood and blood products.

Response: The panel disagreed with the commenter and the language was not added. No change was made as a result of this comment.

Comments: Concerning §601.4 and §601.8, a commenter requested a transition period after the forms are adopted which would allow use of the old and new forms during a specified time period.

Response: There is nothing in rule or statute which would allow the panel the authority to approve of a transition period. No change was made as a result of this comment.

Comments: Concerning §601.4 and §601.8, nine commenters stated that the Spanish translation of the forms were not entirely accurate.

Response: The panel agreed with the commenters and new translations of the forms were obtained.

Comment: Concerning §601.8, two commenters suggested deleting "Name of Person Providing Materials" or rewording to read "Name of Person Providing Materials about the Procedure(s), if Applicable" in the form.

Response: The panel partially agreed with the commenters and changed the sentence to read "Name of Person Providing and Explaining Consent Form".

STATUTORY AUTHORITY

The amendments are authorized under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards, and to prepare the form(s) for the treatments and procedures which do require disclosure.

*§601.4. Disclosure and Consent Form.*

(a) The Texas Medical Disclosure Panel adopts the following form which shall be used by a physician or health care provider to inform a patient or person authorized to consent for the patient of the possible risks and hazards involved in the medical treatments and surgical procedures named in the form. Except for the procedures shown in subsection (b) of this section, the following form shall be used for the medical treatments and surgical procedures described in §601.2 of this title (relating to Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A). Providers shall have the form available in both English and Spanish language versions. Both versions are available from the Health and Human Services Commission.

(1) English form.
Figure: 25 TAC §601.4(a)(1)

(2) Spanish form.
Figure: 25 TAC §601.4(a)(2)

(b) Informed consent for:

(1) radiation therapy shall be provided in accordance with §601.5 of this title (relating to Disclosure and Consent Form for Radiation Therapy);

(2) electroconvulsive therapy shall be provided in accordance with §601.7 of this title (relating to Informed Consent for Electroconvulsive Therapy);

(3) hysterectomy procedures shall be provided in accordance with §601.8 of this title (relating to Disclosure and Consent Form for Hysterectomy); and

(4) anesthesia and/or perioperative pain management (analgesia) procedures shall be in accordance with §601.9 of this title (relating to Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia)).

*§601.8. Disclosure and Consent Form for Hysterectomy.*

The Texas Medical Disclosure Panel adopts the following form which shall be used to provide informed consent to a patient or person authorized to consent for the patient of the possible risks and hazards involved in the hysterectomy surgical procedure named in the form. This form is to be used in lieu of the general disclosure and consent form adopted in §601.4(a) of this title (relating to Disclosure and Consent Form) for disclosure and consent relating to only hysterectomy procedures. Providers shall have the form available in both English and Spanish language versions. Both versions are available from the Health and Human Services Commission.

(1) English form.
Figure: 25 TAC §601.8(1)

(2) Spanish form.
Figure: 25 TAC §601.8(2)

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 June 5, 2019.

TRD-201901694
Noah Appel, M.D.
Chairman
Texas Medical Disclosure Panel
Effective date: January 1, 2020
Proposal publication date: February 22, 2019
For further information, please call: (512) 776-6972

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# TITLE 43. TRANSPORTATION

## PART 15. DENTON COUNTY TAX-ASSESSOR COLLECTOR

### CHAPTER 430. MOTOR VEHICLE TITLE SERVICES

**43 TAC §§430.1 - 430.16**

The Denton County Tax Assessor-Collector adopts new 43 TAC §§430.1 - 430.16, concerning the regulation of motor vehicle title services. Sections 430.1, 430.2, 430.5, 430.8, 430.11, 430.12,

430.14 - 430.16 are adopted without changes to the proposed rules as published in the February 8, 2019, issue of the *Texas Register* (44 TexReg 553) and will not be republished. Sections 430.3, 430.6, 430.7, 430.9, 430.10, and 430.13 are adopted with changes and will be republished. The Denton County Tax Assessor-Collector made minor grammatical and cross-reference changes in these sections. The Denton County Tax Assessor-Collector, Michelle French, has linked these services to document fraud and vehicle theft. Texas Transportation Code, Chapter 520, Subchapter E regulates motor vehicle title services in counties with a population of more than 500,000. Subchapter E requires motor vehicle title services in these counties to be registered, licensed, and required to maintain records for inspection.

Ms. French has determined that for the first five-year period these sections are in effect, there will be no fiscal impact for state or local government. The amount of the fee directly relates to the amount necessary for the department to recover the cost of its operation. The county will keep all revenues from licensing fees to offset spending.

Ms. French also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcement of the rules will be to reduce vehicle theft and related document fraud.

Ms. French has received motor vehicle title services records from approximately 3 to 5 distinct entities per year since 2014. Nearly all of these entities are small businesses, many of which are micro-businesses. The economic costs for persons who are required to comply with these sections will be the license fee, which is due upon application and is not refundable. Small businesses that comply with the sections may experience increased business opportunities because noncompliant competitors will be sanctioned.

In preparing the new sections, Ms. French considered processes which require less information from applicants, informal tracking of records, and random document confirmation. However, study and experience led to the conclusion that public welfare and safety would benefit from clear, consistent, and published standards. Ms. French also considered assessing lower and higher license fees but concluded that the needs of a county like Denton County are different from other counties, such as Hidalgo or El Paso. Required research, background checks and review prior to issuance of a title service and runner license require time on the part of the tax office and associated county offices to conduct background checks. Additionally, title services are monitored throughout the year and upon renewal are put through a review process similar to the original application process.

The Denton County Tax Assessor-Collector received no comments or requests for clarification concerning the proposed rules.

The Denton County Tax Assessor-Collector adopts the new sections pursuant to Transportation Code, Chapter 520, Subchapter E, which provides the county tax assessor-collector the authority to adopt rules regarding motor vehicle title services.

The new rules do not affect any other statutes, articles or codes.

*§430.3. Eligible Applicants.*

A person may not apply for a Motor Vehicle Title Service License or Motor Vehicle Title Service Runner License unless the person is:

(1) at least 18 years of age on the date the application is submitted; and

(2) authorized to handle financial transactions whether representing himself/herself or another.

*§430.6. Completion of Motor Vehicle Title Service License Application.*

(a) A Motor Vehicle Title Service ("MVTS") License Application will not be considered complete under §430.5 of this chapter (relating to Submission of Application) unless all applicable information identified on the Title Service License Application form ("TSLA Form") has been provided, all required documentation has been attached, and the Applicant identified on the TSLA Form has executed the Applicant Affidavit section of the Form as described in subsection (c) of this section. If Applicant Business is a partnership, each partner must submit a separate application. If Applicant Business is a corporation, each officer and director must submit a separate application and identify the state of incorporation on that application.

(b) The following documents must be submitted with and attached to the signed and completed TSLA Form:

(1) a copy of Applicant's valid Texas driver's license and valid Social Security Card, or if applicable, a U.S.-issued alien identification card by the Department of Homeland Security;

(2) an original or certified copy of:

(A) if Applicant Business is a DBA, each applicable Assumed Name Certificate.

(B) if Applicant Business is a corporation, the applicable Articles of Incorporation.

(C) if Applicant Business is a partnership, the applicable Partnership Agreement.

(3) all forms required by the Denton County Tax Assessor-Collector, signed and completed as required by the Denton County Tax Assessor-Collector.

(c) Each Applicant shall provide all information indicated on the TSLA Form, which information shall include but is not limited to:

(1) Applicant name, address, telephone number, social security number, date of birth, Texas Driver's license number, citizenship status, and what position the Applicant holds in the Applicant Business (i.e., owner, principal, director, officer, partner);

(2) Applicant Business name, physical address, mailing address, and telephone number(s);

(3) identification of Applicant Business type (i.e., DBA, Corporation or Partnership);

(4) name under which Service will conduct business (if different than Applicant Business name);

(5) the physical address(es) (including any applicable suite number(s)) of each location/office from which the Service will conduct business (a P.O. Box will not be accepted) and a corresponding photo, with address numbers clearly visible, of each location/building where business is to be conducted;

(6) the name(s), as applicable, of:

(A) each individual with any ownership interest in the Applicant Business; and

(B) each principal, officer or director of Applicant Business.

(7) whether the Applicant or Applicant Business has previously applied for an MVTS license (or permit), the result of the previ-

ous application, and whether the Applicant or Applicant Business has ever held an MVTS license (or permit) that was revoked or suspended;

(8) Applicant Business federal tax identification number; and

(9) Applicant Business state sales tax number.

(d) Each Applicant shall execute the Applicant Affidavit Section of the Form, attesting to the following:

(1) that information provided in and with the application is true and accurate; and

(2) that Applicant freely grants the Denton County Tax Assessor-Collector and local law enforcement agencies permission to conduct a criminal background investigation on Applicant and/or Applicant's business.

*§430.7. Completion of Title Service Runner License Application.*

(a) A Motor Vehicle Title Service Runner License Application will not be considered complete under §430.5 of this chapter (relating to Submission of Application) unless all applicable information identified on the Title Service Runner License Application form ("TSRA Form") has been provided, all required documentation has been attached, and the Applicant identified on the TSRA Form has executed the Applicant Affidavit section of the Form as described in subsection (c) of this section. The following documents must be submitted with and attached to the signed and completed TSRA Form:

(1) a copy of Applicant's valid Texas driver's license and valid Social Security Card, or if applicable, a U.S.-issued alien identification card by the Department of Homeland Security;

(2) all forms required by the Denton County Tax Assessor-Collector, signed and completed as required by the Denton County Tax Assessor-Collector; and

(3) sworn affidavits of each owner, partner, officer or director of the Licensed Title Service identified on the TSRA form, stating that the Licensed Title Service (which must be identified specifically in the statement by name and License No.) employs Applicant and authorizes him/her to submit or present title documents to the Denton County Tax Assessor-Collector on its behalf.

(b) Applicants shall provide all information indicated on the TSRA Form, which information shall include but is not limited to:

(1) the name of the licensed motor vehicle title service for which the Applicant seeks a license to submit or present title documents, the MVTS License Number, and date of issue;

(2) the name, office address and office phone of the title service owner, officer or employee who will supervise Applicant;

(3) Applicant name, address, telephone number, social security number, date of birth, Texas Driver's license number, and citizenship status;

(4) whether the Applicant has previously applied for a MVTS or MVTSR license (or permit), the result of the previous application(s), and whether the Applicant or Applicant Business has ever held an MVTS or MVTS Runner license (or permit) that was revoked or suspended; and

(5) a sworn affidavit stating that the Applicant is employed by the motor vehicle title service identified on the Application and authorized by that motor vehicle title service to submit or present title documents to the county tax assessor-collector.

(c) Each Applicant shall execute the Applicant Affidavit Section of the Form, attesting to the following:

(1) that information provided in and with the application is true and accurate;

(2) that Applicant is employed by the Title Service identified in Section 1 of the Application to submit or present title documents to the Denton County Tax Assessor-Collector under Chapter 520 of the Texas Transportation Code; and

(3) that Applicant freely grants the Denton County Tax Assessor-Collector and local law enforcement agencies permission to conduct a criminal background investigation on Applicant and/or Applicant's business.

*§430.9. License.*

(a) License No./Effective Date. Each license granted will be assigned a number. The effective date of issuance is the date upon which notice is sent under §430.8(c) of this chapter (relating to Application Review/Applicant Background Check/Applicant Interview).

(b) Original. Each licensee shall be issued one original license.

(c) A title service shall process all work at the Denton Main office for the first forty-five days of the license period, after which the title service may process work at any Denton County Tax Assessor-Collector location. A title service whose license is renewed under §430.12(a) - (d) of this chapter (relating to License Renewal) may, upon the commencement of the renewal period, process work at any Denton County Tax Assessor-Collector location.

*§430.10. Records/Reporting.*

(a) MVTS.

(1) Each licensed MVTS must inform Denton County Tax Assessor-Collector of a change to its primary physical and/or mailing address by submitting a written address change request form to the Denton County Tax Assessor-Collector. Denton County Tax Assessor-Collector shall update the address information upon receipt of such request.

(2) A licensed MVTS shall report a change to its principals, partners, owners, officers, or directors as provided in §430.14(b)(1) of this chapter (relating to Suspension).

(3) Each licensed MVTS must keep on file at its principal place of business:

(A) the original MVTS license and Application (including all submitted documentation); and

(B) a copy of each license issued to a Runner for that MVTS, and of the Application (including all submitted documentation) submitted by each such licensed runner.

(b) Runner.

(1) In order to submit or present documents on behalf of an MVTS, a valid runner license must be presented. A licensed runner may submit or present title documents to the county tax assessor-collector only on behalf of the licensed motor vehicle title service for which he/she is a licensed runner.

(2) Each licensed Runner must inform Denton County Tax Assessor-Collector if his/her home address has changed by submitting a written home address change request to Denton County Tax Assessor-Collector. Upon receipt of such request, Denton County Tax Assessor-Collector will update the Runner's home address information.

*§430.13. Denial or Revocation of License.*

(a) Grounds for the denial (after completed Application submission) or revocation of a license include, but are not limited to:

(1) past or present submission by licensee or any applicant for the license, of a license application or related document to the Denton County Tax Assessor-Collector that contains false information or that by its submission constitutes a misrepresentation of fact;

(2) the licensee or any applicant for the license has been convicted of any felony, any crime of moral turpitude, or deceptive business practice for which the sentence completion date is fewer than five years from the application date;

(3) licensee or any applicant for the license has been criminally or civilly sanctioned for the unauthorized practice of law by any government or quasi-government body with jurisdiction to do so;

(4) One or more than one of the affiants described in §430.7(a)(3) of this chapter (relating to Completion of Title Service Runner License Application) has withdrawn his/her affidavit or otherwise informed Denton County Tax Assessor-Collector that Applicant is not employed and authorized to submit title documents on behalf of the title service identified in the application;

(5) disruptive or aggressive behavior by a licensee or any applicant for the license at any Denton County Tax Assessor-Collector location that in the opinion of the Denton County Tax Assessor-Collector creates a security concern;

(6) any dishonest, fraudulent, or criminal activity by a licensee or any applicant for the license; and/or

(7) failure to pay fines and/or fees identified in a suspension notice under §430.14(a) of this chapter (relating to Suspension) within 30 days of the suspension's effective date.

(b) Upon its determination that a license should be denied or revoked, Denton County Tax Assessor-Collector shall send notice of denial/revocation to the applicant(s)/licensee by certified mail. Notice of any license denial shall be sent to each applicant at the home address listed on his/her application form. Notice of a Runner license revocation shall be sent to the most recent home address on file. Notice of a Title Service License revocation shall be sent to the attention of "all" MVTS partners, owners, officers, directors, or principals (as applicable) at the most recent primary physical business address on file for licensee. The notice shall identify the grounds that warrant the determination.

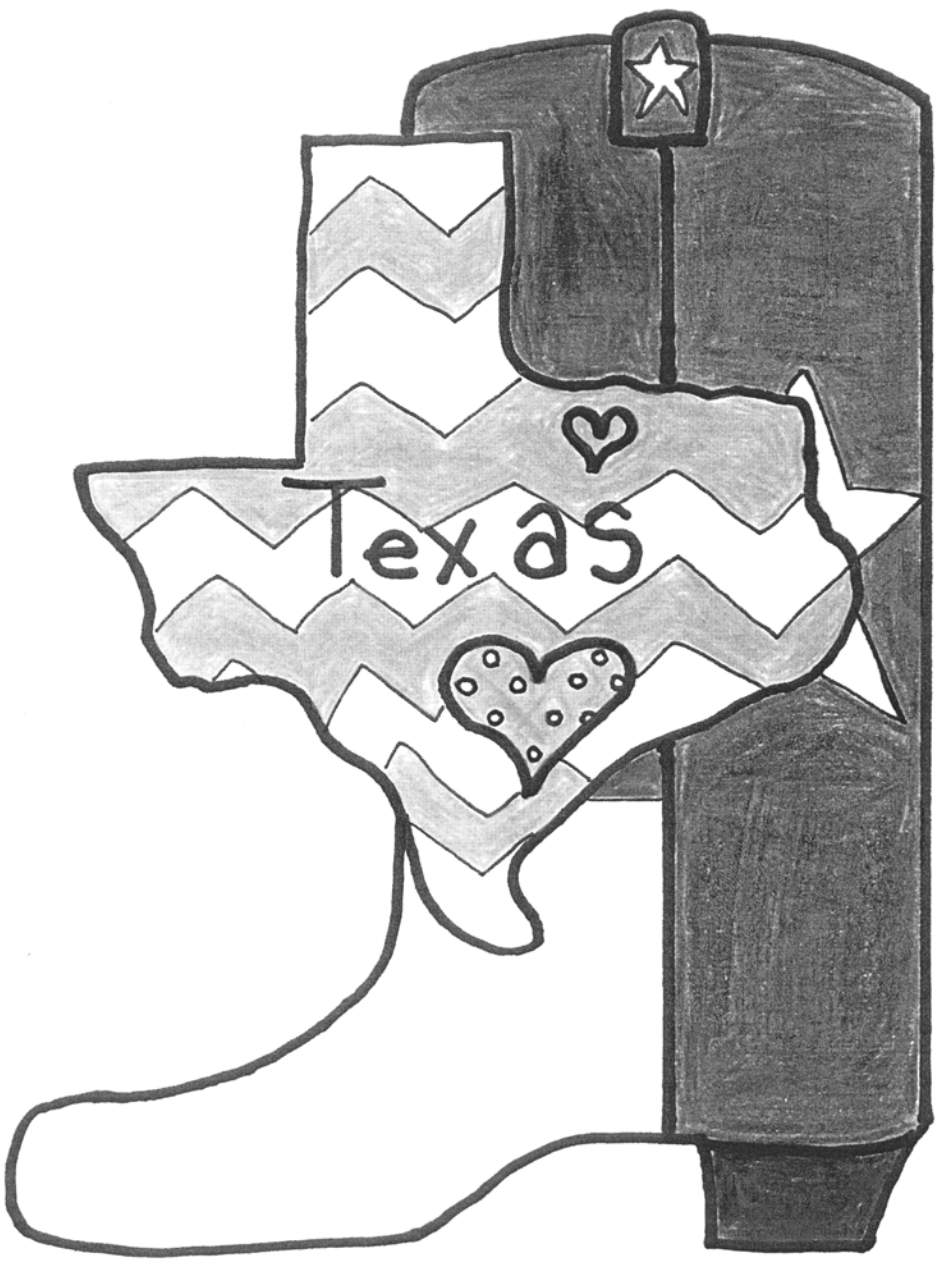
(c) Revocation - effective date. Revocation shall be effective upon the date notice described in subsection (b) of this section is sent.

(d) A licensee whose license is denied or revoked may not apply for any license before the first anniversary of the date of the revocation. No applicant for a license that has been denied or revoked may apply for any license before the first anniversary of the date of revocation.

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 June 6, 2019.

TRD-201901705
Michelle French
Tax Assessor-Collector
Denton County Tax Assessor-Collector
Effective date: June 26, 2019
Proposal publication date: February 8, 2019
For further information, please call: (940) 349-3500


Texas

# 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 Racing Commission

**Title 16, Part 8**

The Texas Racing Commission files this notice of intent to review Chapters 321, Pari-Mutuel Wagering, and 323, Disciplinary Action and Enforcement. This review is conducted pursuant to the Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption their administrative rules every four years.

The review shall assess whether the reasons for initially adopting the rules within each chapter continue to exist and whether any changes to the rules should be made.

All comments or questions in response to this notice of rule reviews may be submitted in writing to Jean Cook, Chief of Staff of the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907. The Commission will accept public comments regarding the chapters and the rules within them for 30 days following publication of this notice in the *Texas Register.*

Any proposed changes to the rules within Chapters 321 and 323 as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the Commission.

TRD-201901763
Chuck Trout
Executive Director
Texas Racing Commission
Filed: June 11, 2019

♦ ♦ ♦

Texas Commission on Environmental Quality

**Title 30, Part 1**

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 281, Applications Processing.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 281 continue to exist.

Comments regarding suggested changes to the rules in Chapter 281 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 281. Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-051-281-OW. Comments must be received by July 23, 2019. For further information, please contact Kathy Ramirez, Water Availability Division, at (512) 239-6757.

TRD-201901750
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 11, 2019

♦ ♦ ♦

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 288 continue to exist.

Comments regarding suggested changes to the rules in Chapter 288 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 288. Written comments may be submitted to Paige Bond, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-

054-288-OW. Comments must be received by July 23, 2019. For further information, please contact Kathy Ramirez, Water Availability Division, at (512) 239-6757.

TRD-201901742
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 11, 2019

♦ ♦ ♦

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 321, Control of Certain Activities by Rule.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 321 continue to exist.

Comments regarding suggested changes to the rules in Chapter 321 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 321. Written comments may be submitted to Paige Bond, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-033-321-OW. Comments must be received by July 23, 2019. For further information, please contact Laurie Fleet, Water Quality Division, at (512) 239-5445.

TRD-201901743
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: June 11, 2019

♦ ♦ ♦

# Adopted Rule Reviews

## Texas Racing Commission

**Title 16, Part 8**

Pursuant to Government Code §2001.039, the Texas Racing Commission adopts the review of Texas Administrative Code, Title 16, Part 8, Chapters 313, Officials and Rules of Horse Racing, and 315, Officials and Rules for Greyhound Racing. The review assessed whether the reason for adopting the chapter continues to exist.

The Commission received no comments on the proposed review, which was published in the November 2, 2018, issue of the *Texas Register* (43 TexReg 7363).

Relating to the review of Chapter 313, the Commission finds that the reasons for adopting the chapter continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code §2001.039.

Relating to the review of Chapter 315, the Commission finds that the reasons for adopting the chapter continue to exist and readopts the sections at this time without changes in accordance with the requirements of Government Code §2001.039.

This concludes the review of Texas Administrative Code, Title 16, Part 8, Chapters 313 and 315.

TRD-201901762
Chuck Trout
Executive Director
Texas Racing Commission
Filed: June 11, 2019

♦ ♦ ♦

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §289.232(d)(20)

$$C = \frac{s}{\overline{X}} = \frac{1}{\overline{X}}\left[\sum_{i=1}^{n}\frac{(X_i - \overline{X})^2}{n-1}\right]^{1/2}$$

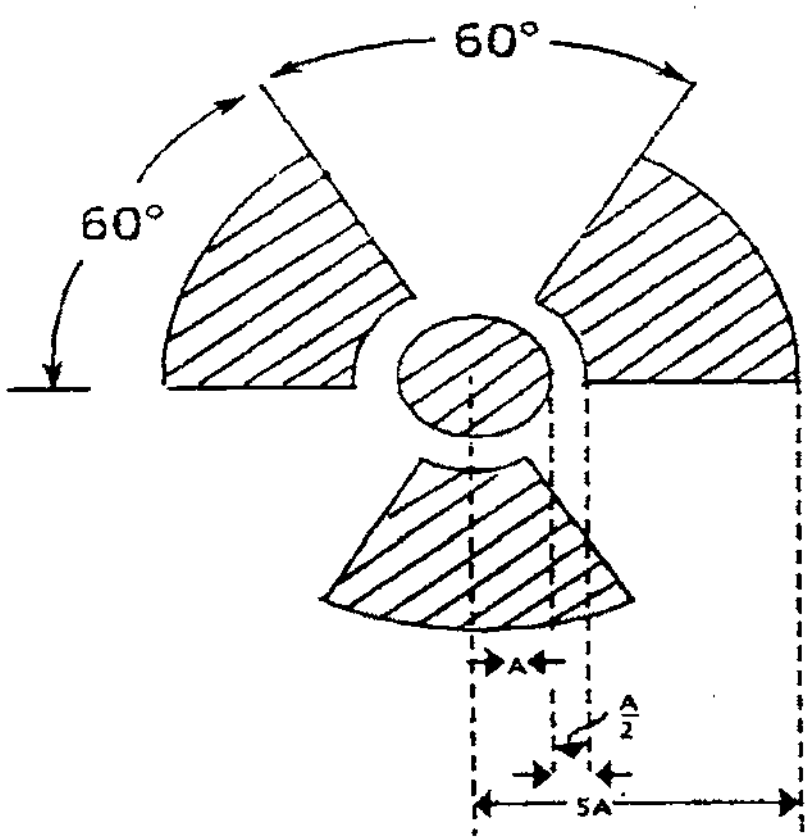
$$\text{where : } s = \text{estimated standard deviation of the population}$$

$$\overline{X} = \text{mean value of observations in sample}$$

$$X_i = i\text{th observation in sample}$$

$$n = \text{number of observations in sample}$$

Figure: 25 TAC §289.232(j)(4)(A)



Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

# NOTICE TO EMPLOYEES

## TEXAS REGULATIONS FOR CONTROL OF RADIATION

The Department of State Health Services has established standards for your protection against radiation hazards, in accordance with the Texas Radiation Control Act, Health and Safety Code, Chapter 401.

**YOUR EMPLOYER'S RESPONSIBILITY**

Your employer is required to-
1. Apply these rules to work involving sources of radiation.
2. Post or otherwise make available to you a copy of the Department of State Health Services rules, certificates of registration, notices of violations, and operating procedures that apply to your work, and explain their provisions to you.

**YOUR RESPONSIBILITY AS A WORKER**

You should familiarize yourself with those provisions of the rules and the operating procedures that apply to your work. You should observe the rules for your own protection and protection of your co-workers.

**WHAT IS COVERED BY THESE RULES**

1. Limits on exposure to sources of radiation in restricted and unrestricted areas;
2. Measures to be taken after accidental exposure;
3. Individual monitoring devices, surveys, and equipment;
4. Caution signs, labels, and safety interlock equipment;
5. Exposure records and reports;
6. Options for workers regarding agency inspections; and
7. Related matters.

**REPORTS ON YOUR RADIATION EXPOSURE HISTORY**

1. The rules require that your employer give you a written report if you receive an exposure in excess of any applicable limit set forth in the rules or in the certificate of registration. The basic limits for exposure to employees are set forth in 25 Texas Administrative Code (TAC) §289.232(i)(4)(A) - (C) of this title (relating to Radiation Control Regulations for Dental Radiation Machines.) This subsection specifies limits on exposure to radiation.

2. If you work where individual monitoring devices are provided in accordance with 25 TAC §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation);

(a) your employer shall furnish to you an annual written report of your exposure to radiation if.
  (1) the individual's occupational dose exceeds 100 mrem (1 mSv) total effective dose equivalent or 100 mrem (1 mSv) to any individual organ or tissue; or
  (2) the individual requests his or her annual dose report in writing.
(b) your employer shall give you a written report, upon termination of your employment, of your radiation exposures if you request the information on your radiation exposure in writing.

**INSPECTIONS**

All licensed or registered activities are subject to inspection by representatives of the Department of State Health Services. In addition, any worker or representative of the workers, who believes that there is a violation of the Texas Radiation Control Act, the rules issued thereunder, or the terms of the employer's license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the Department of State Health Services. The request shall state the specific grounds for the notice, and shall be signed by the worker or the representative of the workers. During inspections, agency inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition that the individual believes contributed to or caused any violations as described above.

## POSTING REQUIREMENTS

Copies of this notice shall be posted in a sufficient number of places in every establishment where employees are employed in activities registered, in accordance with 25 TAC §289.232 (relating to Radiation Control Regulations for Dental Radiation Machines), to permit employees to observe a copy on the way to or from their place of employment.

Applicable section of 25 TAC Chapter 289 may be viewed online, at www.dshs.texas.gov/radiation. Our license and/or certificate of registration and any associated documents, our operation procedures, and any "Notice of Violation" or order issued by the agency may be viewed at the following location: _____

Figure: 25 TAC §289.232(j)(5)(E)(i)(I)

HALF-VALUE LAYER FOR SELECTED kVp

| X-ray Tube Voltage (kilovolt peak) | | Minimum HVL (mm of aluminum) | |
|---|---|---|---|
| Designed operating range | Measured operating potential | Intraoral dental systems manufactured before or on June 10, 2006 | Intraoral dental systems manufactured after June 10, 2006 |
| Below 51 | 30 | 0.3 | 1.5 |
| | 40 | 0.4 | 1.5 |
| | 50 | 0.5 | 1.5 |
| 51 to 70 | 51 | 1.2 | 1.5 |
| | 60 | 1.3 | 1.5 |
| | 70 | 1.5 | 1.5 |
| Above 70 | 71 | 2.1 | 2.1 |
| | 80 | 2.3 | 2.3 |
| | 90 | 2.5 | 2.5 |
| | 100 | 2.7 | 2.7 |
| | 110 | 3.0 | 3.0 |
| | 120 | 3.2 | 3.2 |
| | 130 | 3.5 | 3.5 |
| | 140 | 3.8 | 3.8 |
| | 150 | 4.1 | 4.1 |

Figure: 25 TAC §289.232(j)(5)(J)(ii)

| Type of Machine | Frequency |
|---|---|
| CBCT | Annually not to exceed 14 months from the prior EPE |
| All other Dental X-ray | Four years from the date of prior EPE |

Figure: 25 TAC §289.232(j)(5)(J)(x)

RADIOGRAPHIC ENTRANCE EXPOSURE LIMITS (AIR KERMA LIMITS)

| Examination | Kilovolt Peak | Exposure Limit (mR) | (Air Kerma Limit) (mGy) |
|---|---|---|---|
| Adult Intraoral | 60 and above | 450 | (4.5) |
| Adult Intraoral | Less than 60 | 600 | (6.0) |

Figure: 25 TAC §289.232(k)(1)(K)(i)(II)

"INFORMATION FALLING WITHIN EXCEPTION OF THE TEXAS PUBLIC INFORMATION ACT, GOVERNMENT CODE, CHAPTER 552 ---- CONFIDENTIAL

This document contains information submitted to the Department of State Health Services, Radiation Control by

_____

(Name of Company)(Name of Submitter)

that is claimed to fall within the following exception to the Texas Public Information Act, Government Code, Chapter 552, Subchapter C _____

(Appropriate Subsection)

WITHHOLD FROM PUBLIC DISCLOSURE

_____

(Signature and Title)(Office)(Date)"

Figure: 25 TAC §289.232(k)(2)(A)

RECORDS RETENTION

| | Name of Record/Document | Specific Rule Subsection | Time Interval for Keeping Record/Document |
|---|---|---|---|
| (i) | Inventory of all Radiation Machines Possessed | (i)(5)(I) | Until next routine on-site inspection |
| | | | |
| (ii) | Receipt, Transfer, and Disposal of Each Radiation Machine Possessed | (i)(5)(J) | Until termination of registration |
| | | | |
| (iii) | Current Operating and Safety Procedures<br><br>Documentation that all staff who operate the radiation machine(s) have read this document | (j)(2)<br><br>(j)(2)(A) | Until termination of registration<br><br>Until next routine on-site inspection |
| | | | |
| (iv) | Current 25 TAC, §289.232 of this title | (j)(4)(B)(i)(II)(-a-) | Until termination of registration |
| | | | |
| (v) | Current Certificate of Registration | (j)(4)(B)(i)(II)(-b-) | Until termination of registration |
| | | | |
| (vi) | Notice of Violation From Last Inspection (if applicable) | (j)(4)(B)(i)(II)(-d-) | Until next routine on-site inspection |
| | | | |
| (vii) | Documentation of Corrections of any Violations | (j)(4)(B)(i)(II)(-d-) | Until next routine on-site inspection |
| | | | |
| (viii) | Records of machine corrections or repairs | (j)(5)(I) | Until next routine on-site inspection |
| | | | |
| (ix) | Equipment Performance Evaluations | (j)(5)(J)(iii) | 10 years |
| | | | |
| (x) | United States Food and Drug Administration Variances | (j)(8) | Until transfer of machines or termination of registration |
| | | | |
| (xi) | Film Processing Records and Corrections | (j)(12)(F) | Until next routine on-site inspection |
| | | | |
| (xii) | Alternative Processing System Records | (j)(13) | Until next routine on-site inspection |

| | Name of Record/Document | Specific Rule Subsection | Time Interval for Keeping Record/Document |
|---|---|---|---|
| | | | |
| (xiii) | Digital Imaging Acquisition System Records | (j)(14)(A)(ii)(II) | Until next routine on-site inspection |
| | | | |
| (xiv) | Records at Additional Authorized Sites | (k)(1)(I) | While location is authorized on registration |

Figure: 25 TAC §289.232(l)(3)(D)(iii)(II)

BASE ADMINISTRATIVE PENALTIES

Table A – Base Amounts

| Type of User | Amount |
|---|---|
| All registrants | $5,000 |
| Other persons not registered | $10,000 |

Table B – Percentage of Base Amounts Based on Severity Level of Violation

| Severity Level | Percent of Amount Listed in Table A |
|---|---|
| I | 100 |
| II | 80 |
| III | 50 |
| IV | 15 |
| V | 5 |

**Figure: 25 TAC §601.4(a)(1)**

**DISCLOSURE AND CONSENT**
**Medical Care and Surgical Procedures**

**TO THE PATIENT: You have the right to be informed about 1) your condition, 2) the recommended medical care or surgical procedure, and 3) the risks related to this care/procedure. This disclosure is designed to provide you this information, so that you can decide whether to consent to receive this care/procedure. Please ask your physician/health care provider any remaining questions you have before signing this form.**

**Description of Medical Care and Surgical Procedure(s)**

I voluntarily request my physician/health care provider [name/credentials] _____, and other health care providers, to treat my condition which is: _____
_____

I understand that the following care/procedure(s) are planned for me:
_____
_____
_____

**Potential for Additional Necessary Care/Procedure(s)**

I understand that during my care/procedure(s) my physician/health care provider may discover other conditions which require additional or different care/procedure(s) than originally planned.

I authorize my physicians/health care providers to use their professional judgment to perform the additional or different care/procedure(s) they believe are needed.

**Use of Blood**

Please initial "Yes" or "No":

___ Yes ___ No I consent to the use of blood and blood products as necessary for my health during the care/procedure(s). The risks that may occur with the use of blood and blood products are:

1. Serious infection including but not limited to Hepatitis and HIV which can lead to organ damage and permanent impairment.
2. Transfusion related injury resulting in impairment of lungs, heart, liver, kidneys, and immune system.
3. Severe allergic reaction, potentially fatal.

**Risks Related to this Care/Procedure(s)**

Just as there may be risks and hazards to my health without treatment, there are also risks and hazards related to the care/procedure(s) planned for me.

I understand that all care/procedure(s) involve some risks, ranging from minor to severe. These risks include infection, blood clots in veins, lungs or other organs, hemorrhage (severe bleeding), allergic reactions, poor wound healing, and death.

The chances of these occurring may be different for each patient based on the care/procedure(s) and the patient's current health.

Risks of this care/procedure(s) include, but are not limited to **[include List A risks here and additional risks if any]**:

| |
|---|
| |
| |
| |
| |
| |
| |
| |
| |
| |

**Granting of Consent for this Care/Procedure(s)**

In signing below, I consent to the care/procedure(s) described above. I acknowledge the following:

- I understand this care/procedure(s) does not guarantee a result or a cure to my condition.
- I have been given an opportunity to ask questions I may have about:
    1. Alternative forms of treatment,
    2. Risks of non-treatment,
    3. Steps that will occur during my care/procedure(s), and
    4. Risks and hazards involved in the care/procedure(s).
- I believe I have enough information to give this informed consent.
- I certify this form has been fully explained to me and the blank spaces have been filled in.
- I have read this form or had it read to me.
- I understand the information on this form.

If any of those statements are not true for you, please talk to your physician/health care provider before continuing.

**Patient/Other Legally Authorized Representative (signature required):**

_____ _____

Print Name Signature

If Legally Authorized Representative, list relationship to Patient: _____

Date: _____ Time: _____A.M./P.M.

**Witness:**

_____ _____

Print Name Signature

_____

Address (Street or P.O. Box)

_____

City, State, Zip Code

**Figure: 25 TAC §601.4(a)(2)**

**CONSENTIMIENTO MÉDICO INFORMADO**
**Atención médica y procedimientos quirúrgicos**

**AL PACIENTE: Usted tiene derecho a que se le informe sobre: 1) su enfermedad, 2) la atención médica o procedimiento quirúrgico recomendado, y 3) los riesgos relacionados con dicha atención o procedimiento. Le presentamos esta información con el fin de que usted pueda tomar la decisión de dar o no dar su consentimiento para recibir esta atención médica o procedimiento quirúrgico. Le exhortamos a que consulte con su médico o proveedor médico sobre cualquier pregunta que pueda tener antes de firmar este formulario.**

**Descripción de la atención médica o procedimiento quirúrgico**

De manera voluntaria, solicito a mi médico o proveedor médico [nombre/credenciales] _____, así como a otros proveedores médicos, que den el tratamiento necesario a mi enfermedad, a saber: _____
_____

Quedo enterado de que se tiene previsto aplicarme la siguiente atención médica o procedimiento quirúrgico:
_____
_____
_____

**Otras atenciones médicas o procedimientos quirúrgicos que podrían ser necesarios**

Comprendo que, durante las atenciones o procedimientos quirúrgicos que yo reciba, mi médico o proveedor médico podría descubrir otros problemas que requieran atenciones o procedimientos adicionales o distintos a los que originalmente se previeron.

Autorizo a mis médicos o proveedores médicos a usar su criterio profesional para realizar las atenciones o procedimientos adicionales o distintos que consideren necesarios.

**El uso de sangre**

Por favor, escriba sus iniciales junto a "Sí" o "No":

___ Sí ___ No Doy mi consentimiento para que se use sangre y hemoderivados, según sea necesario para mi buena salud, durante la atención médica o los procedimientos quirúrgicos. Existe el riesgo de que, con el uso de sangre o hemoderivados, se presente alguna de las siguientes situaciones:

1. Una infección grave, como hepatitis o una ocasionada por el VIH, entre otras, que podría provocar un daño orgánico y un deterioro permanente.
2. Daños relacionados con la transfusión que podrían lesionar los pulmones, el corazón, el hígado, los riñones y el sistema inmunitario.
3. Una reacción alérgica grave, que podría ser mortal.

**Riesgos relacionados con esta atención médica o procedimiento quirúrgico**

Al igual que puede haber riesgos y peligros para mi salud si no recibo ningún tratamiento, también existen riesgos y peligros relacionados con la atención médica o procedimiento quirúrgico que se tiene previsto realizarme.

Comprendo que toda atención médica o procedimiento quirúrgico supone también ciertos riesgos, que pueden ser de menores a graves. Entre estos riesgos se cuentan: infección; formación de coágulos sanguíneos en las venas, los pulmones u otros órganos; hemorragia (sangrado intenso); reacciones alérgicas; mala cicatrización de las heridas, o la muerte.

Las probabilidades de que algo de lo anterior ocurra varían en cada persona, ya que dependen de la atención médica o procedimiento quirúrgico y del estado de salud del paciente.

Los riesgos de esta atención médica o procedimiento quirúrgico incluyen, entre otros **[**Incluya aquí los riesgos de la Lista A y riesgos adicionales si los hay**]**:

| |
|---|
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**Consentimiento para someterse a esta atención médica o procedimiento quirúrgico**

Mediante mi firma más abajo, doy mi consentimiento para que se me realice la atención médica o procedimiento quirúrgico descrito anteriormente. Reconozco lo siguiente:

- Quedo enterado de que esta atención médica o procedimiento quirúrgico no garantiza la conclusión o la curación de mi enfermedad.
- Se me ha dado la oportunidad de hacer preguntas para aclarar mis posibles dudas sobre lo siguiente:
    1. Tratamientos alternativos,
    2. Los riesgos de no recibir ningún tratamiento,
    3. Los pasos que se sucederán durante la atención médica o procedimiento quirúrgico al que me someta, y
    4. Los riesgos y peligros de someterse a esta atención médica o procedimiento quirúrgico.
- Considero que he recibido la información suficiente para poder otorgar mi consentimiento informado.
- Declaro que el contenido del presente formulario se me ha explicado en su totalidad y que sus espacios en blanco han sido rellenados.
- He leído este formulario o alguien me lo ha leído.
- Entiendo la información contenida en este formulario.

Si alguna de las anteriores declaraciones no es válida para usted, comuníquese con su médico o proveedor médico antes de continuar.

**El paciente / Otro representante legalmente autorizado (es obligatoria la firma):**

_____ _____

Nombre en letra de molde Firma

Si usted es el representante legalmente autorizado, indique cuál es su relación con el paciente:

_____

Fecha: _____ Hora: _____a.m./p.m.

**Testigo:**

_____ _____

Nombre en letra de molde Firma

_____

Dirección (calle o apartado postal)

_____

Ciudad, estado, código postal

**Figure: 25 TAC §601.8(1)**

## DISCLOSURE AND CONSENT FOR HYSTERECTOMY

**TO THE PATIENT: You have the right to be informed about 1) your condition, 2) the recommended medical care or surgical procedure, and 3) the risks related to this care/procedure. This disclosure is designed to provide you this information, so that you can decide whether to consent to receive this care/procedure. Please ask your physician/health care provider any remaining questions you have before signing this form.**

**Notice:** Refusal to consent to a hysterectomy will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving federal funds or otherwise affect your right to future care or treatment.

**Notice:** You have the right to seek consultation from a second physician before deciding whether or not to consent.

---

**Description of Medical Care and Surgical Procedure(s)**

I voluntarily request my physician/health care provider [name/credentials] _____, and other health care providers, to treat my condition which is:
_____
_____

I understand that the following care/procedure(s) are planned for me:
_____
_____
_____

I understand that a hysterectomy is a removal of the uterus through an incision in the lower abdomen (abdominal hysterectomy) or vagina (vaginal hysterectomy).

I understand that the hysterectomy is permanent and not reversible. I understand that I will not be able to become pregnant or bear children.

---

**Potential for Additional Necessary Care/Procedure(s)**

I understand that additional surgery may be necessary to remove or repair other organs besides the uterus, including an ovary, tube, appendix, bladder, rectum, or vagina.

I understand during my care/procedure(s) my physician/health care provider may discover other conditions which require additional or different care/procedure(s) than originally planned.

I authorize my physicians/health care providers to use their professional judgment to perform the additional or different care/procedure(s) they believe are needed.

**Use of Blood**

Please initial "Yes" or "No":

___ Yes ___ No I consent to the use of blood and blood products as necessary for my health during the care/procedure(s). The risks that may occur with the use of blood and blood products are:

1. Serious infection including but not limited to Hepatitis and HIV which can lead to organ damage and permanent impairment.
2. Transfusion related injury resulting in impairment of lungs, heart, liver, kidneys, and immune system.
3. Severe allergic reaction, potentially fatal.

**Risks Related to this Care/Procedure(s)**

Just as there may be risks and hazards to my health without treatment, there are also risks and hazards related to the care/procedure(s) planned for me.

I understand that all care/procedure(s) involve some risks, ranging from minor to severe. These risks include infection, blood clots in veins, lungs or other organs, hemorrhage (severe bleeding), allergic reactions, poor wound healing, and death.

The chances of these occurring may be different for each patient based on the care/procedure(s) and the patient's current health.

Risks of this care/procedure(s) include, but are not limited to:

**Abdominal or Vaginal Hysterectomy:**

1. Uncontrollable leakage of urine.
2. Injury to bladder.
3. Sterility.
4. Injury to the tube (ureter) between the kidney and the bladder.
5. Injury to the bowel and/or intestinal obstruction.
6. Need to convert to abdominal incision.

**For laparoscopically assisted hysterectomy, the additional risks include:**

1. Damage to intra-abdominal structures (e.g., bowel, bladder, blood vessels, or nerves).
2. Intra-abdominal abscess and infectious complications.
3. Trocar site complications (e.g., hematoma/bleeding, leakage of fluid, or hernia formation).
4. Conversion of the procedure to an open procedure.
5. Cardiac dysfunction.

**If a power morcellator in laparoscopic surgery is utilized, the additional risks include:**

1. If cancer is present, may increase the risk of the spread of cancer.
2. Increased risk of damage to adjacent structures.

ADDITIONAL RISKS OR COMMENTS (line through if none): _____

_____

_____

**Granting of Consent for this Care/Procedure(s)**

In signing below, I consent to the care/procedure(s) described above. I acknowledge the following:

- I understand this care/procedure(s) does not guarantee a result or a cure to my condition.
- I have been given an opportunity to ask questions I may have about:
    1. Alternative forms of treatment,
    2. Risks of non-treatment,
    3. Steps that will occur during my care/procedure(s), and
    4. Risks and hazards involved in the care/procedure(s).
- I believe I have enough information to give this informed consent.
- I certify this form has been fully explained to me and the blank spaces have been filled in.
- I have read this form or had it read to me.
- I understand the information on this form.

If any of those statements are not true for you, please talk to your physician/health care provider before continuing.

Name of Person Providing and Explaining Consent Form: _____

**Patient/Other Legally Authorized Representative (signature required):**

_____ _____

Print Name Signature

If Legally Authorized Representative, list relationship to Patient: _____

Date: _____ Time: _____A.M./P.M.

**Witness:**

_____ _____

Print Name Signature

_____

Address (Street or P.O. Box)

_____

City, State, Zip Code

**Figure: 25 TAC §601.8(2)**

## CONSENTIMIENTO MÉDICO INFORMADO PARA SOMETERSE A UNA HISTERECTOMÍA

**A LA PACIENTE: Usted tiene derecho a que se le informe sobre: 1) su enfermedad, 2) la atención médica o procedimiento quirúrgico recomendado, y 3) los riesgos relacionados con dicha atención o procedimiento. Le presentamos esta información con el fin de que usted pueda tomar la decisión de dar o no dar su consentimiento para recibir esta atención médica o procedimiento quirúrgico. Le exhortamos a que consulte con su médico o proveedor médico sobre cualquier pregunta que tenga antes de firmar este formulario.**

**Aviso:** La negativa a dar su consentimiento para someterse a una histerectomía no tendrá como resultado el retiro o la retención de ningún beneficio proporcionado por programas o proyectos que reciban fondos federales, ni afectará el derecho de usted a recibir atención o tratamiento médicos en el futuro.

**Aviso:** Usted tiene derecho a consultar a otro médico en busca de una segunda opinión antes de decidir si da su consentimiento o no.

---

**Descripción de la atención médica o procedimiento quirúrgico**

De manera voluntaria, solicito a mi médico o proveedor médico [nombre/credenciales] _____, así como a otros proveedores médicos, que den el tratamiento necesario a mi enfermedad, a saber: _____
_____

Quedo enterada de que se tiene previsto aplicarme la siguiente atención médica o procedimiento quirúrgico:
_____
_____
_____

Reconozco que una histerectomía consiste en la extirpación del útero, ya sea mediante una incisión en la parte inferior del abdomen (histerectomía abdominal) o en la vagina (histerectomía vaginal).

Quedo enterada de que la histerectomía es de carácter permanente e irreversible. Quedo enterada de que al someterme a la histerectomía ya no podré quedar embarazada ni procrear.

---

**Otras atenciones médicas o procedimientos quirúrgicos que podrían ser necesarios**

Comprendo que podría ser necesaria una intervención quirúrgica adicional para extirpar o reparar anomalías en otros órganos además del útero, como los ovarios, las trompas, el apéndice, la vejiga, el recto o la vagina.

Comprendo que, durante las atenciones o procedimientos quirúrgicos que yo reciba, mi médico o proveedor médico podría descubrir otros problemas que requieran atenciones o procedimientos adicionales o distintos a los que originalmente se previeron.

Autorizo a mis médicos o proveedores médicos a usar su criterio profesional para realizar las atenciones o procedimientos adicionales o distintos que consideren necesarios.

**El uso de sangre**

Por favor, escriba sus iniciales junto a "Sí" o "No":

___ Sí ___ No Doy mi consentimiento para que se use sangre y hemoderivados, según sea necesario para mi buena salud, durante la atención médica o los procedimientos quirúrgicos. Existe el riesgo de que, con el uso de sangre y hemoderivados, se presente alguna de las siguientes situaciones:

1. Una infección grave, como hepatitis o una ocasionada por el VIH, entre otras, que podría provocar un daño orgánico y un deterioro permanente.
2. Daños relacionados con la transfusión que podrían lesionar los pulmones, el corazón, el hígado, los riñones y el sistema inmunitario.
3. Una reacción alérgica grave que podría ser mortal.

**Riesgos relacionados con esta atención médica o procedimiento quirúrgico**

Al igual que puede haber riesgos y peligros para mi salud si no recibo ningún tratamiento, también existen riesgos y peligros relacionados con la atención médica o procedimiento quirúrgico que se tiene previsto realizarme.

Comprendo que toda atención médica o procedimiento quirúrgico supone también ciertos riesgos, que pueden ser de menores a graves. Entre estos riesgos se cuentan: infección; formación de coágulos sanguíneos en las venas, los pulmones u otros órganos; hemorragia (sangrado intenso); reacciones alérgicas; mala cicatrización de las heridas, o la muerte.

Las probabilidades de que algo de lo anterior ocurra varían en cada persona, ya que dependen de la atención médica o procedimiento quirúrgico y del estado de salud de la paciente.

Los riesgos de esta atención médica o procedimiento quirúrgico incluyen, entre otros:

**Histerectomía abdominal o vaginal:**

1. Incontinencia urinaria.
2. Lesión en la vejiga.
3. Esterilidad.
4. Lesión al conducto (uréter) que conecta los riñones con la vejiga.
5. Lesión al intestino u obstrucción intestinal.
6. Necesidad de practicar una incisión abdominal.

**En el caso de la histerectomía asistida por laparoscopia, los riesgos también incluyen:**

1. Lesión a estructuras intraabdominales (por ej., intestino, vejiga, vasos sanguíneos o nervios).
2. Absceso intraabdominal y complicaciones infecciosas.
3. Complicaciones en el sitio del trocar (por ej., hematoma o sangrado, pérdida de líquido o formación de hernias).
4. Tener que cambiar de procedimiento y practicar una intervención abierta.
5. Disfunción cardiaca.

**Si en la cirugía laparoscópica se utiliza un resectoscopio eléctrico, los riesgos adicionales incluyen los siguientes:**

1. Si la paciente presenta cáncer, el riesgo de diseminación del cáncer podría ser mayor.
2. El riesgo de lesión a las estructuras adyacentes es mayor.

RIESGOS O COMENTARIOS ADICIONALES (si no hay ninguno, favor de tachar las líneas con una raya):

_____

_____

_____

**Consentimiento para someterse a esta atención médica o procedimiento quirúrgico**

Mediante mi firma más abajo, doy mi consentimiento para que se me realice la atención médica o procedimiento quirúrgico descrito anteriormente. Reconozco lo siguiente:

- Quedo enterada de que esta atención o procedimiento quirúrgico no garantiza la conclusión o la curación de mi enfermedad.
- Se me ha dado la oportunidad de hacer preguntas para aclarar mis posibles dudas sobre lo siguiente:
    1. Tratamientos alternativos,
    2. Los riesgos de no recibir ningún tratamiento,
    3. Los pasos que se sucederán durante la atención médica o procedimiento quirúrgico al que me someta, y
    4. Los riesgos y peligros de someterse a esta atención médica o procedimiento quirúrgico.
- Considero que he recibido la información suficiente para poder otorgar mi consentimiento informado.
- Declaro que el contenido del presente formulario se me ha explicado en su totalidad y que sus espacios en blanco han sido rellenados.
- He leído este formulario o alguien me lo ha leído.
- Entiendo la información contenida en este formulario.

Si alguna de las anteriores declaraciones no es válida para usted, comuníquese con su médico o proveedor médico antes de continuar.

Nombre de la persona que le proporcionó y explicó el material informativo:

_____

**La paciente / Otro representante legalmente autorizado (es obligatoria la firma):**

_____ _____

Nombre en letra de molde Firma

Si usted es el representante legalmente autorizado, indique cuál es su relación con la paciente:

Fecha: _____ Hora: _____a.m./p.m.

**Testigo:**

_____ _____

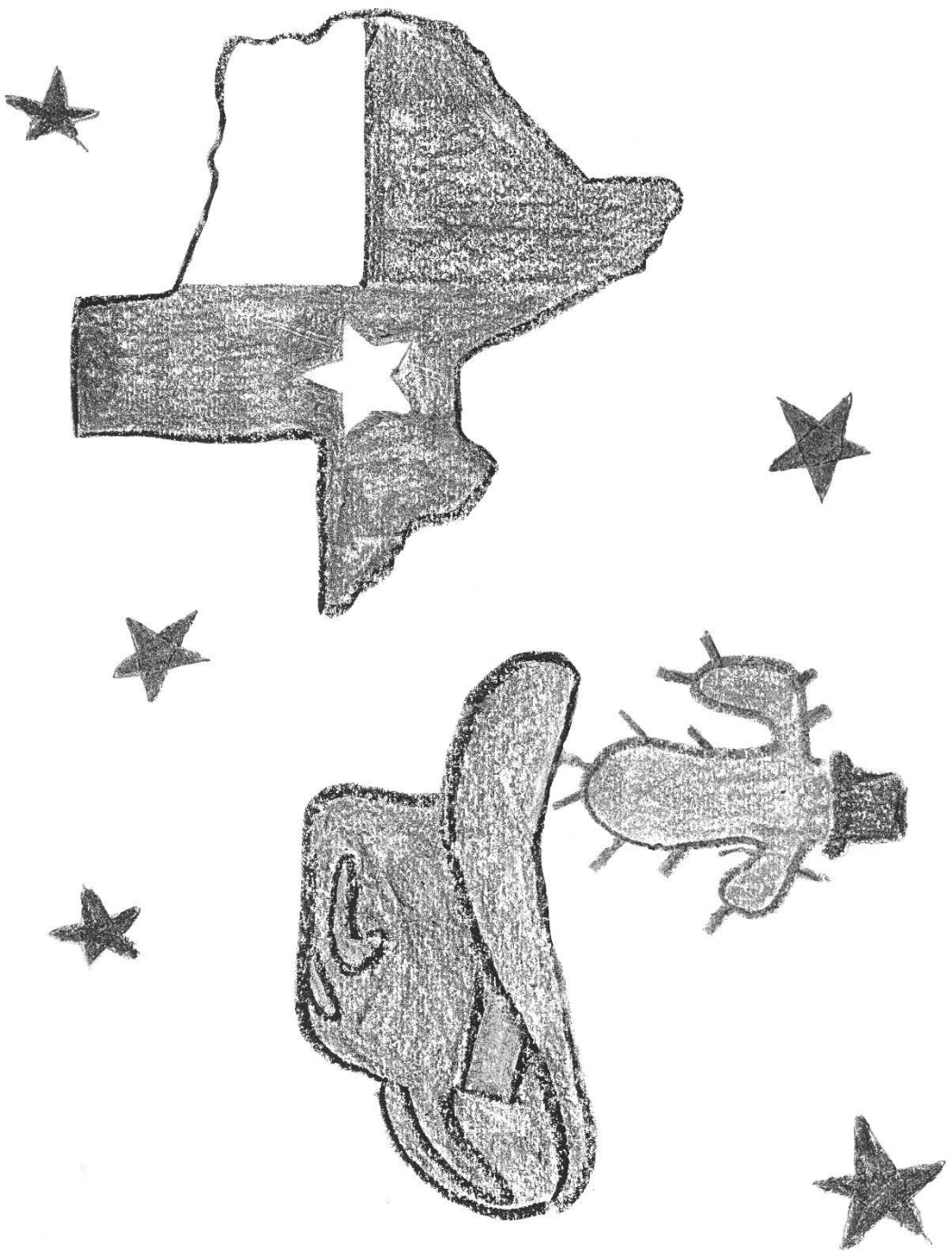
Nombre en letra de molde Firma

_____

Dirección (Calle o apartado postal)

_____

Ciudad, estado, código postal



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 Water Code and Texas Health and Safety Code
Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may 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: *Harris County, Texas and the State of Texas v. KMCO, LLC,* Cause No. 2017-56541; in the 151st Judicial District Court, Harris County, Texas.

Nature of the Suit: Defendant KMCO, LLC, owns and operates a chemical manufacturing facility in Crosby, Harris County, Texas. Harris County initiated this enforcement suit against KMCO, LLC alleging several instances of nuisance odors, unauthorized air emissions, and unauthorized discharges of hazardous waste at its facility during the months of February 2013, September 2016, and January 2017. The State of Texas, by and through the Texas Commission on Environmental Quality, was joined as a necessary and indispensable party.

Proposed Settlement: The proposed Agreed Final Judgment and Permanent Injunction assesses civil penalties against KMCO, LLC, in the amount of $87,000 to be equally divided between Harris County and the State; attorney's fees to the State in the amount of $5,000; and attorney's fees to Harris County in the amount of $8,000, plus costs of court. The Agreed Final Judgment and Permanent Injunction also orders KMCO, LLC, to conduct daily Audio, Visual, and Olfactory checks at the facility, to cease manufacturing hexamethylenetetramine, and to notify Harris County Pollution Control Services Department within two hours of learning of an off-site nuisance odor.

For a complete description of the proposed settlement, the proposed Agreed Final Judgment and Permanent Injunction should be reviewed in its entirety. 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 written comments on the same, should be directed to Erin K. Snody, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201901770
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: June 12, 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 06/17/19 - 06/23/19 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/17/19 - 06/23/19 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-201901744
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 11, 2019

♦ ♦ ♦

## Court of Criminal Appeals

In the Court of Criminal Appeals of Texas

# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 19-005

## ORDER PROPOSING THE ADOPTION OF TEXAS RULE OF APPELLATE PROCEDURE 73.9

**ORDERED** that:

1. Pursuant to section 22.108 of the Texas Government Code, the Court of Criminal Appeals proposes the adoption of Rule of Appellate Procedure 73.9.

2. This amendment may be changed in response to public comments received before October 1, 2019. Any person may submit written comments to the Court of Criminal Appeals at txccarulescomments@txcourts.gov or by mail to the Clerk of the Court of Criminal Appeals at P.O. Box 12308, Austin, Texas 78711.

3. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

Dated: June 3, 2019.

Sharon Keller, Presiding Judge

Michael Keasler, Judge

Barbara P. Hervey, Judge

Bert Richardson, Judge

Kevin P. Yeary, Judge

David Newell, Judge

Mary Lou Keel, Judge

Scott Walker, Judge

Michelle M. Slaughter, Judge

**73.9. Rules of Evidence**

The Texas Rules of Evidence apply to a hearing held on a postconviction application for a writ of habeas corpus filed under Code of Criminal Procedure Article 11.07 or 11.071.

Comment to 2019 change: Rule 73.9 is added to clarify that the Rules of Evidence apply in hearings held in Article 11.07 and 11.071 habeas corpus cases. This rule does not the limit the ability of an applicant to attached supporting documents to an application for writ of habeas corpus.

TRD-201801704
Deana Williamson
Clerk of the Court
Court of Criminal Appeals
Filed: June 6, 2019

♦ ♦ ♦

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 23, 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 **July 23, 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: Aqua Utilities, Incorporated; DOCKET NUMBER: 2019-0116-PWS-E; IDENTIFIER: RN102690153; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §21.4 and TWC, §5.702, by failing to pay consolidated water quality fees, including associated late fees, for TCEQ Financial Administration Account Number 23007349 for Fiscal Year 2019; and 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute per connection; PENALTY: $157; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2019-0241-PWS-E; IDENTIFIER: RN101180008; LOCATION: Manvel, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.43(e), by failing to install all potable water storage tanks and pressure maintenance facilities in a lockable building that is designed to prevent intruder access or enclose all potable water storage tanks and pressure maintenance facilities by an intruder-resistant fence with lockable gates; 30 TAC §290.45(b)(1)(A)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum well capacity of 1.5 gallons per minute per connection; 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 50 gallons per connection; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: $1,270; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: C. C. Crawford Retreading Company, Incorporated; DOCKET NUMBER: 2019-0742-WQ-E; IDENTIFIER: RN103074746; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: tire retreading facility; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Brownfield; DOCKET NUMBER: 2019-0522-PST-E; IDENTIFIER: RN102851748; LOCATION: Brownfield, Terry County; TYPE OF FACILITY: fleet refueling facility; 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 UST; and 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to assure that all installed spill and overfill prevention devices are maintained in good operating condition; PENALTY: $3,563; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(5) COMPANY: City of Jayton; DOCKET NUMBER: 2019-0177-PWS-E; IDENTIFIER: RN101385128; LOCATION: Jayton, Kent County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e) and Texas Health and Safety Code, §341.033(a), by failing to operate the production, treatment, and distribution facilities at the public water system at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director (ED); 30 TAC §290.46(f)(2) and (3)(B)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(n)(2), by failing to make an accurate and up-to-date map of the distribution system available so that valves and mains can be easily located during emergencies; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $485; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Jourdanton; DOCKET NUMBER: 2019-0415-MWD-E; IDENTIFIER: RN101919900; LOCATION: Jourdanton, Atascosa County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number WQ0010418001, Operational Requirements Number 3.b, by failing to

submit a closure plan for review and approval to the TCEQ Biosolids Team for any closure activity at least 90 days prior to conducting such activity; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: City of Port Arthur; DOCKET NUMBER: 2019-0125-PST-E; IDENTIFIER: RN101608560; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: emergency generator; 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; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every 30 days; PENALTY: $7,150; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,720; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: City of Robert Lee; DOCKET NUMBER: 2018-1223-MWD-E; IDENTIFIER: RN101920163; LOCATION: Robert Lee, Coke 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 WQ0013901001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and §319.1 and TPDES Permit Number WQ0013901001, Effluent Limitations and Monitoring Requirements Number 1 and Monitoring and Reporting Requirements Number 1, by failing to perform effluent calculations as specified in the permit; 30 TAC §§305.125(1), (11)(A), and (17), 319.1, 319.4, and 319.5(b) and TPDES Permit Number WQ0013901001, Effluent Limitations and Monitoring Requirements Number 1 and Monitoring and Reporting Requirements Number 1, by failing to collect and analyze effluent samples at the intervals specified in the permit; and 30 TAC §305.125(1) and (17), and §319.7(d) and TPDES Permit Number WQ0013901001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports at the intervals specified in the permit; PENALTY: $27,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $21,700; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(9) COMPANY: City of Smithville; DOCKET NUMBER: 2018-0147-MWD-E; IDENTIFIER: RN101919736; LOCATION: Smithville, Bastrop County; TYPE OF FACILITY: wastewater treatment facility with an associated wastewater collection system; RULES VIOLATED: 30 TAC §217.59(b)(1), by failing to secure the lift station, including all mechanical and electrical equipment, in an intruder-resistant manner; 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010286001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of untreated wastewater from the wastewater collection system into or adjacent to any water in the state; 30 TAC §305.125(1) and (5) and §319.11(d) and TPDES Permit Number WQ0010286001, Operational Requirements Number 1, by failing to ensure that flow measurements, equipment, installation and procedures conform to those prescribed in 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 (ED); 30 TAC §305.125(1) and 9(A) and §327.32(b) and TPDES Permit Number WQ0010286001, Monitoring and Reporting Requirements Numbers 7.a and 7.b.i, by failing to notify the TCEQ of any noncompliance which may endanger human health or safety, or the environment, within 24 hours of becoming aware of any noncompliance, orally or by facsimile transmission; and submit written notification within five working days of becoming aware of any noncompliance; and 30 TAC §217.6(d) and §305.125(1) and TPDES Permit Number WQ0010286001, Operational Requirements Number 8.b, by failing to submit a summary transmittal letter to the ED and a copy to the appropriate regional office for each collection system project and wastewater treatment facility project; PENALTY: $7,300; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,840; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(10) COMPANY: City of Streetman; DOCKET NUMBER: 2018-0507-MWD-E; IDENTIFIER: RN101919991; LOCATION: Streetman, Freestone County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1) and and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010471001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with the permitted effluent limitations; 30 TAC §305.125(1) and TPDES Permit Number WQ0010471001, Monitoring and Reporting Requirements Number 7, by failing to provide notification of any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of the noncompliance; 30 TAC §305.125(1) and (5) and §317.3(e)(5), and TPDES Permit Number WQ0010471001, 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 (17) and §319.7(d), and TPDES Permit Number WQ0010471001, Monitoring and Reporting Requirements Number 1, by failing to submit effluent monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and (19) and TPDES Permit Number WQ0010471001, Permit Conditions Number 1.a, by failing to submit accurate and complete Discharge Monitoring Reports; PENALTY: $24,412; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $19,530; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: City of Tatum; DOCKET NUMBER: 2019-0066-PWS-E; IDENTIFIER: RN101255800; LOCATION: Tatum, Rusk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(e)(2), by failing to conduct an operation evaluation and submit a written operation evaluation report to the executive director (ED) within 90 days after being notified of analytical results that caused an exceedance of the operational evaluation level for total trihalomethanes (TTHM) for Disinfectant Byproducts (DBP2) at Site 1 during the fourth quarter of 2017 and second quarter of 2018; and 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 TTHM based on the locational running annual average, and failing to provide public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL of TTHM for Stage 2 DBP2 at Site 1 for the second quarter of 2018; PENALTY: $302; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: City of White Oak; DOCKET NUMBER: 2019-0072-MWD-E; IDENTIFIER: RN102079696; LOCATION: White Oak, Gregg 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 WQ0010940001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $9,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $7,200; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: City of White Settlement; DOCKET NUMBER: 2018-1047-WQ-E; IDENTIFIER: RN101242642; LOCATION: White Settlement, Tarrant County; TYPE OF FACILITY: sanitary sewer collection system with an associated wastewater line; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: $5,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $5,250; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: EMROOZ, Incorporated dba Snappy Foods 8; DOCKET NUMBER: 2018-1240-PST-E; IDENTIFIER: RN102427853; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.42(a) and §334.48(a), by failing to design, install, maintain, and operate all components of a underground storage tank (UST) system in a manner that will prevent releases of regulated substances from the system due to structural failure or corrosion; 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection to all underground components of a UST system which are designed or used to convey, contain, or store regulated substances; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip the UST with overfill prevention equipment; 30 TAC §334.74(1), by failing to conduct system tests according to the requirements of tightness testing after a confirmed release of a regulated substance on June 19, 2018; 30 TAC §334.77 and §334.78, by failing to initiate required abatement measures and submit a report to the TCEQ within 20 days after a release of a regulated substance from a UST system; and TWC, §26.121(a)(2), by failing to prevent a discharge of other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state; PENALTY: $25,875; ENFORCEMENT COORDINATOR: Tyler Gerhardt, (512) 239-2506; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(15) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2018-1747-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 18287, PSDTX730M4, and PAL7, Special Conditions Number 1, Federal Operating Permit Number O1229, General Terms and Conditions and Special Terms and Conditions Number 32, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $11,738; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $4,695; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Grace Chapel Assembly of God of Magnolia; DOCKET NUMBER: 2019-0404-PWS-E; IDENTIFIER: RN105817951; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(f)(3)(A), by failing to submit a recommendation to the executive director (ED) for optimal corrosion control treatment within six months following the end of the January 1, 2018 - June 30, 2018, monitoring period during which the copper action level was exceeded; 30 TAC §290.117(g)(2)(A), by failing to submit a recommendation to the ED for source water treatment within 180 days following the end of the January 1, 2018 - June 30, 2018, monitoring period during which the copper action level was exceeded; and 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 was distributed for the January 1, 2018 - June 30, 2018, monitoring period; PENALTY: $165; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: GRUPO PETROGAS, L.L.C.; DOCKET NUMBER: 2019-0367-MLM-E; IDENTIFIER: RN104638051; LOCATION: McAllen, Hidalgo County; TYPE OF FACILITY: underground storage tank (UST) system repair services business; RULES VIOLATED: 30 TAC §334.6(a)(7), by failing to submit a construction notification form to the TCEQ prior to commencing repairs on UST systems; 30 TAC §30.301(b) and §334.401(b), by failing to obtain a TCEQ contractor registration before offering to undertake, representing itself as being able to undertake, or undertaking the installation, repair, or removal of a UST; 30 TAC §335.11(b) and 40 Code of Federal Regualtions §263.20(a), by failing to maintain proper manifest documentation for the shipment or delivery of hazardous or Class I waste; and 30 TAC §335.68, by failing to place placards on vehicles transporting hazardous wastes; PENALTY: $6,341; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: J & T TRANSPORT, INCORPORATED; DOCKET NUMBER: 2019-0466-PST-E; IDENTIFIER: RN102444767; LOCATION: Fabens, El Paso County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: $2,515; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(19) COMPANY: Lake Livingston Water Supply Corporation; DOCKET NUMBER: 2018-1230-PWS-E; IDENTIFIER: RN101253136; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids (HAA5) based on the locational running annual average; 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes (TTHM) based on the locational running annual average; 30 TAC §290.117(n), by failing to comply with the additional requirements as required by the executive director (ED) to ensure that minimal levels of corrosion are maintained in the distribution system; 30 TAC §290.122(b)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL for TTHM for the first quarter of 2018; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL for HAA5 for the first quarter of 2018; and 30 TAC §290.122(c)(2)(A)

and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to provide the nitrate monitoring results for the January 1, 2015 - December 31, 2015, monitoring period as requested in a letter dated February 16, 2017; PENALTY: $2,493; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: LAMB COUNTY ELECTRIC COOPERATIVE, INCORPORATED; DOCKET NUMBER: 2019-0532-PST-E; IDENTIFIER: RN100695329; LOCATION: Littlefield, Lamb County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Hailey Johnson, (512)-239-1756; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(21) COMPANY: MICHAEL D. MCCLEARY, SR.; DOCKET NUMBER: 2019-0767-WOC-E; IDENTIFIER: RN105523146; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Epi Villarreal, (361) 825-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: MO-VAC SERVICE COMPANY; DOCKET NUMBER: 2018-0389-WQ-E; IDENTIFIER: RN104148044; LOCATION: Laredo, Webb County; TYPE OF FACILITY: oilfield trucking services company; RULES VIOLATED: 30 TAC §281.25(a)(4) and TWC, §26.121(a), and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; PENALTY: $20,000; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(23) COMPANY: Newport Homebuilders, Ltd.; DOCKET NUMBER: 2019-0783-WQ-E; IDENTIFIER: RN105530307; LOCATION: Lantana, Denton County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: NORRELL CONSTRUCTION, INCORPORATED; DOCKET NUMBER: 2019-0231-PST-E; IDENTIFIER: RN101735777; LOCATION: Clute, Brazoria County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the corrosion protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: $6,769; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: Omt Flow, LLC; DOCKET NUMBER: 2019-0782-WQ-E; IDENTIFIER: RN100705375; LOCATION: Gainesville, Collin County; TYPE OF FACILITY: manufacturing facility; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: OXY USA WTP LP; DOCKET NUMBER: 2018-1326-AIR-E; IDENTIFIER: RN101222602; LOCATION: Claremont, Kent County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §101.8(a) and §122.143(4), Federal Operating Permit (FOP) Number O550, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.C, and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct sampling of an emissions source to determine opacity rate, composition, and/or construction of emissions; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 20660 and PSDTX795M2, Special Conditions (SC) Number 13.D, FOP Number O550, GTC and STC Number 6, and THSC, §382.085(b), by failing to install sampling ports and platforms in accordance with the permit; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 20660 and PSDTX795M2, SC Number 13.G, FOP Number O550, GTC and STC Number 6, and THSC, §382.085(b), by failing to perform stack sampling within 180 days of the permit issuance; PENALTY: $8,785; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(27) COMPANY: Patterson Wood Products, Incorporated; DOCKET NUMBER: 2018-1363-AIR-E; IDENTIFIER: RN101969202; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: wood pellet and shavings manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Federal Operating Permit (FOP) Number O3664, General Terms and Conditions (GTC) and Special Terms and Conditions Number 3, New Source Review Permit Number 114950, Special Conditions Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate; 30 TAC §122.121 and §122.210(a) and THSC, §382.054 and §382.085(b), by failing to submit an application to revise a FOP to change, add, or remove one or more permit terms or conditions; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O3664, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: $7,388; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(28) COMPANY: PERVEN, LLC dba Stop N Drive 2; DOCKET NUMBER: 2019-0308-PST-E; IDENTIFIER: RN101433019; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(B) and (3), by failing to notify the agency of any change or additional information regarding the underground storage tank (UST) system within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.42(a) and §334.49(a)(2) and TWC, §26.3475(d), by failing to design, install, and operate all components of a UST system in a manner that will prevent releases of regulated substances due to structural failure or corrosion; and 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST in a manner which will detect a release at a frequency of at least once every 30 days and failing to test the line leak detector at least once per year for performance and operational reliability; PENALTY: $9,141; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(29) COMPANY: PETROFUELS CORPORATION dba Paradise Seafood Market; DOCKET NUMBER: 2019-0212-PST-E; IDENTIFIER: RN102491099; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery;

and 30 TAC §334.74, by failing to investigate suspected releases of regulated substances within 30 days of discovery; PENALTY: $10,526; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(30) COMPANY: Pico Propane Operating, LLC; DOCKET NUMBER: 2016-1974-PST-E; IDENTIFIER: RN102782653; LOCATION: Carrizo Springs, Dimmit County; TYPE OF FACILITY: wholesale fuel distribution operation; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $6,879; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(31) COMPANY: S & Y Incorporated; DOCKET NUMBER: 2019-0099-PST-E; IDENTIFIER: RN101572337; LOCATION: Grand Prairie, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.222(3) and Texas Health and Safety Code, §382.085(b), by failing to ensure no avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; and 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all installed spill and overfill prevention devices are maintained in good operating condition; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: SIMPLY AQUATICS, INCORPORATED dba El Pinon Estates Water System; DOCKET NUMBER: 2019-0045-PWS-E; IDENTIFIER: RN102675303; LOCATION: Broaddus, San Augustine County; TYPE OF FACILITY: public water supply (PWS); RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the facility's Well Number 1; 30 TAC §290.41(c)(3)(J), by failing to provide Well Number 1 with a concrete sealing block that extends a minimum of three feet from the exterior well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual of sufficient detail to provide the operator with routine maintenance and repair procedures, with protocols to be utilized in the event of a natural or man-made catastrophe, as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency; 30 TAC §290.43(d)(2), by failing to provide the facility's three pressure tanks with an easily readable pressure gauge and pressure release device; 30 TAC §290.44(a)(4), by failing to locate the top of the water distribution lines below the frost line and in no case less than 24 inches below ground surface; 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a minimum total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a minimum total capacity of 2.0 gpm per connection at each pump station or pressure plane; 30 TAC §290.46(f)(2) and (3)(B)(ii) and (iv) and (D)(i), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.46(u), by failing to plug an abandoned PWS well with cement in accordance with 16 TAC §76 or submit the test results proving that the well is in a non-deteriorated condition; 30 TAC §290.46(v), by failing to ensure that all electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees, and/or associated late fees, for TCEQ Financial Administration Account Number 92030013 for Fiscal Year 2019; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan at each water treatment plant that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: $6,424; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(33) COMPANY: The Church in Peaster; DOCKET NUMBER: 2019-0194-PWS-E; IDENTIFIER: RN110603503; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code, §341.033(a), by failing to use a water works operator with a Class D or higher license for a groundwater system serving no more than 250 connections; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: $663; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(34) COMPANY: Trend Gathering & Treating, LLC; DOCKET NUMBER: 2019-0316-AIR-E; IDENTIFIER: RN103043840; LOCATION: Teague, Freestone County; TYPE OF FACILITY: compressor station; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Federal Operating Permit Number O2782/General Operating Permit Number 514, Site-wide Requirements (b)(3), and Texas Health and Safety Code, §382.085(b), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance and failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201901738
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 10, 2019

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Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater New Permit No. WQ0015738001

**APPLICATION AND PRELIMINARY DECISION.** Cherryville GP, Inc. and Cherryville #5, Ltd., 10127 Tate Lane, Frisco, Texas 75033, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015738001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day. TCEQ received this application on November 5, 2018.

The facility will be located approximately 600 feet south of the intersection of Dickerson Road and State Highway 80, east of State Highway 80, in Caldwell County, Texas 78655. The treated effluent will be discharged to Dickerson Creek, thence to Lower San Marcos River in Segment No. 1808 of the Guadalupe River Basin. The unclassified receiving water use is limited aquatic life use for Dickerson Creek. The designated uses for Segment No. 1808 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.813014&lng=-97.80165&zoom=13&type=r

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Caldwell County Courthouse, 110 South Main Street, Lockhart, Texas.

**PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because of significant interest and it was requested by a local legislator.** The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application.

The public meeting will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

**The Public Meeting is to be held:**

**Tuesday, July 16, 2019, at 7:00 p.m.**

**Prairie Lea Independent School District (Auditorium)**

**6910 San Marcos Highway 80**

**Prairie Lea, Texas 78661**

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.**

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the

application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at http://www14.tceq.texas.gov/epic/eComment/ within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.**

**INFORMATION AVAILABLE ONLINE.** For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

**AGENCY CONTACTS AND INFORMATION.** Public comments and requests must be submitted either electronically at **http://www14.tceq.texas.gov/epic/eComment/,** or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Cherryville GP, Inc. and Cherryville #5, Ltd. at the address stated above or by calling Ms. Jennifer Scholl, J.D., Armbrust & Brown, PLLC, at (512) 435-2380.

Persons with disabilities who need special accommodations at the public meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issuance Date June 6, 2019

TRD-201901774
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 12, 2019

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## Enforcement Orders

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2017-0838-AIR-E on June 12, 2019, assessing $41,076 in administrative penalties with $8,215 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Loadcraft Industries, Ltd., Docket No. 2017-1093-IHW-E on June 12, 2019, assessing $8,200 in administrative penalties with $1,640 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.

A default order was adopted regarding Fayez Zahi Rafidi dba Southmost Shop, Docket No. 2017-1503-PST-E on June 12, 2019, assessing $7,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OLD WEST MHP, LLC, Docket No. 2017-1549-PWS-E on June 12, 2019, assessing $597 in administrative penalties. 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 Lake Padre Development Company, LLC, Docket No. 2017-1553-MLM-E on June 12, 2019, assessing $11,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, 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 The Organic Recycler of Texas LLC, Docket No. 2017-1747-MSW-E on June 12, 2019, assessing $10,000 in administrative penalties with $2,000 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 Hidalgo County, Docket No. 2017-1771-WQ-E on June 12, 2019, assessing $18,750 in administrative penalties with $3,750 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 Veterans of Foreign Wars of the United States dba Lake Texoma VFW Post 7873, Docket No. 2018-0189-PWS-E on June 12, 2019, assessing $980 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.

An agreed order was adopted regarding PALO DURO SERVICE COMPANY, INC., Docket No. 2018-0219-PWS-E on June 12, 2019, assessing $606 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ASMAR KHALIL INC dba Super Track 2, Docket No. 2018-0467-PST-E on June 12, 2019, assessing $13,875 in administrative penalties with $2,775 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, 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 Reyna A. Martinez, Docket No. 2018-0541-PWS-E on June 12, 2019, assessing $2,600 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Logan Harrell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TPC Group LLC, Docket No. 2018-0557-AIR-E on June 12, 2019, assessing $25,447 in administrative penalties. 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 Ball Metal Beverage Container Corp., Docket No. 2018-0585-AIR-E on June 12, 2019, assessing $98,675 in administrative penalties with $19,735 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding An Cong Van, Docket No. 2018-0642-WQ-E on June 12, 2019, assessing $12,500 in administrative penalties with $2,500 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 Vincent Thien Nguyen, Docket No. 2018-0657-WQ-E on June 12, 2019, assessing $12,500 in administrative penalties with $2,500 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 Lion Elastomers LLC, Docket No. 2018-0687-AIR-E on June 12, 2019, assessing $14,625 in administrative penalties with $2,925 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Keene, Docket No. 2018-0769-PWS-E on June 12, 2019, assessing $1,150 in administrative penalties. 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 Total Petrochemicals & Refining USA, Inc., Docket No. 2018-0830-IWD-E on June 12, 2019, assessing $37,500 in administrative penalties with $7,500 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JUSRYN COMPANY, INC., Docket No. 2018-0845-PWS-E on June 12, 2019, assessing $709 in administrative penalties. 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 Deer Country Water Supply Corporation, Docket No. 2018-0934-PWS-E on June 12, 2019, assessing $172 in administrative penalties with $172 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 Eastland County Water Supply District, Docket No. 2018-0974-PWS-E on June 12, 2019, assessing $202 in administrative penalties. 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 the City of San Augustine, Docket No. 2018-1067-PWS-E on June 12, 2019, assessing $840 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Abbott, Docket No. 2018-1174-MWD-E on June 12, 2019, assessing $7,750 in administrative penalties with $1,550 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201901771
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 12, 2019

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## Enforcement Orders

An agreed order was adopted regarding Jai Ambica Corporation dba Stop and Shop 2, Docket No. 2017-1019-PST-E on June 11, 2019, assessing $4,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SECURITY AIRPARK, INCORPORATED, Docket No. 2017-1164-PST-E on June 11, 2019, assessing $4,600 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BUCHANAN ROAD GAS AND CONVENIENCE LLC dba L E Kwik Stop, Docket No. 2018-0885-PST-E on June 11, 2019, assessing $5,524 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kathryn Schroeder, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201901772
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 12, 2019

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## Notice of Correction to Agreed Order Number 2

In the October 26, 2018, issue of the *Texas Register* (43 TexReg 7246), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 2, for Boa Hoai Tran dba JT Brothers RV Park and Miriam Zambarana dba JT Brothers RV Park. The error is as submitted by the commission.

The reference to the company should be corrected to read: "Bao Hoai Tran dba JT Brothers RV Park and Miriam Zambrana dba JT Brothers RV Park".

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-201901741
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 10, 2019

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Notice of Correction to Agreed Order Number 20

In the November 2, 2018, issue of the *Texas Register* (43 TexReg 7383), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 20, for ONEOK Hydrocarbon, L.P. The errors are as submitted by the commission.

The reference to the penalty should be corrected to read: "$32,625".

The reference to the Supplemental Environmental Project Offset Amount should be corrected to read: "$13,050".

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-201901740
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 10, 2019

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Notice of Correction to Agreed Order Number 32

In the August 17, 2018, issue of the *Texas Register* (43 TexReg 5425), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 32, for Wright City Water Supply Corporation. The error is as submitted by the commission.

The reference to the penalty should be corrected to read: "$426".

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-201901739
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 10, 2019

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Notice of Hearing: Blue Sky Farms, LLC; SOAH Docket No. 582-19-4890; TCEQ Docket No. 2019-0026-AGR; Permit No. WQ0003077000

**APPLICATION.**

Blue Sky Farms, LLC, 4611 South Farm-to-Market Road 219, Dublin, Texas 76446 has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment of Texas Pollutant Discharge Elimination System Permit No. WQ0003077000, for a Concentrated Animal Feeding Operation (CAFO) to authorize the applicant to add five new land management units (LMUs): LMU #12 - 156 acres, LMU #13 - 63 acres, LMU #14 - 174 acres, LMU #15A - 56 acres and LMU #15B - 64 acres; increase the acreage of LMU #6 from 83 to 86 acres and LMU #7 from 76 to 89 acres; and reconfigure LMUs #3, #4 and #9 so that the acreage of LMU #3 will decrease from 60 to 41 acres, and LMU #4 and LMU #9 will increase from 42 to 58 acres and 25 to 28 acres, respectively. The total land application area has increased from 682 to 1,211 acres. Other proposed changes include the expansion of the cross ventilated barn, addition of Well #15 and plugging of Wells #14 and #16. The authorized maximum capacity of 7,100 total dairy cattle, of which 3,100 head are milking cows, remains unchanged. The application was revised after the publication of the Notice of Receipt of Application and Intent (NORI) to increase the total land application area from 682 to 1,211 acres, instead of the total acreage of 1,209 stated in the NORI. TCEQ received this application on February 21, 2018.

The facility is located on the east side of Farm-to-Market Road 219 approximately 2.25 miles south of the intersection of Farm-to-Market Road 219 and Farm-to-Market Road 1702, Dublin in Erath County, Texas. The facility is located in the drainage area of the Leon River Below Proctor Lake and the North Bosque River in Segment Nos. 1221 and 1226 of the Brazos River Basin. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.048611&lng=-98.301388&zoom=13&type=r>. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. This permit is consistent with the requirements of the antidegradation implementation procedures in 30 Texas Administrative Code (TAC) §307.5 (c)(2)(G) of the Texas Surface Water Quality Standards and no lowering of water quality is anticipated. The TCEQ Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's Preliminary Decision, and draft permit are available for viewing and copying at the Texas Commission on Environmental Quality Region 4, Stephenville Office, 580 West Lingleville Road, Suite D, Stephenville, Texas 76401.

**CONTESTED CASE HEARING.**

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

**10:00 a.m. - July 25, 2019**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on April 26, 2019. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

**In accordance with 1 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."**

**INFORMATION.**

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at http://www.tceq.texas.gov/.

Further information may also be obtained from Mr. Harry DeWit, Blue Sky Farms, LLC at the address stated above or by calling Mr. Corey Mullin, Enviro-Ag Engineering, Inc. at (254) 965-3500.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: June 10, 2019

TRD-201901776
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 12, 2019

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Notice of Hearing: United Front, LLC; SOAH Docket No. 582-19-4891l; TCEQ Docket No. 2019-0305-MWD; Permit No. WQ0015563001

**APPLICATION.**

United Front, LLC, 3902 Canyon Bluff Court, Houston, Texas 77059, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015563001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. TCEQ received this application on March 6, 2017.

The facility will be located at 7040 Interstate 10 Frontage Road, in Colorado County, Texas 77474. The treated effluent will be discharged to a roadside ditch, thence to an unnamed tributary, thence to San Bernard River Above Tidal in Segment No. 1302 of the Brazos-Colorado Coastal Basin. The unclassified receiving water use is minimal aquatic life use for the roadside ditch and the unnamed tributary. The designated uses for Segment No. 1302 are primary contact recreation, public water supply, and high aquatic life use. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice. For the exact location, refer to the application. *http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.743055&lng=-96.33&zoom=13&type=r.*

In accordance with 30 Texas Administrative Code (TAC) Section 307.5 and the TCEQ's Procedures to Implement the Texas Surface Water Quality Standards (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Nesbitt Memorial Library, 529 Washington Street, Columbus, Texas.

**CONTESTED CASE HEARING.**

The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing at:

**10:00 a.m. - July 30, 2019**

**William P. Clements Building**

**300 West 15th Street, 4th Floor**

**Austin, Texas 78701**

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will be held at a later date, will be similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on April 30, 2019. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

**In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at***www.soah.texas.gov,***or in printed format upon request to SOAH."**

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at *http://www.tceq.texas.gov/.*

Further information may also be obtained from United Front, LLC at the address stated above or by calling Mr. Asif Momin at (281) 450-8657.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: June 10, 2019

TRD-201901777

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 12, 2019

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## Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Gas Town Inc, DBA Mobil Gas Town: SOAH Docket No. 582-19-5396; TCEQ Docket No. 2018-0338-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - July 11, 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 6, 2018 concerning assessing administrative penalties against and requiring certain actions of Gas Town Inc, dba Mobil Gas Town, for violations in Parker County, Texas, of: Tex. Water Code §26.3475(c)(1) and (d), Tex. Health & Safety Code §382.085(b), and 30 Texas Administrative Code §§115.225, 334.49(a)(4) and 334.50(b)(1)(A).

The hearing will allow Gas Town Inc, dba Mobil Gas Town, 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 Gas Town Inc, dba Mobil Gas Town, 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 Gas Town Inc, dba Mobil Gas Town 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.** Gas Town Inc, dba Mobil Gas Town, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and ch. 26, Tex. Health & Safety Code ch. 382, and 30 Texas Administrative Code chs. 70, 115, and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 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 John S. Merculief II, 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: June 11, 2019

TRD-201901778
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 12, 2019

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## Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Henry Rodriguez dba Gulf Coast Septic Waste: SOAH Docket No. 582-19-5397; TCEQ Docket No. 2018-0773-SLG-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. - July 11, 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 February 26, 2019 concerning assessing administrative penalties against and requiring certain actions of Henry Rodriguez dba Gulf Coast Septic Waste, for violations in Cameron County, Texas, of: 30 Texas Administrative Code §312.145(a) and (b)(4).

The hearing will allow Henry Rodriguez dba Gulf Coast Septic Waste, 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 Henry Rodriguez dba Gulf Coast Septic Waste, 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 Henry Rodriguez dba Gulf Coast Septic Waste 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.** Henry Rodriguez dba Gulf Coast Septic Waste, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054, Texas Water Code chs. 7 and 26, Texas Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 312; Texas 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 Jess Robinson, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

**Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 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: June 11, 2019

TRD-201901779
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 12, 2019

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## Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Raul Gomez: SOAH Docket No. 582-19-5398; TCEQ Docket No. 2017-1624-MLM-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

**10:00 a.m. - July 11, 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 August 29, 2018, concerning assessing administrative penalties against and requiring certain actions of Raul Gomez, for violations in Zavala County, Texas, of: Tex. Health & Safety Code §382.085(b), and 30 Texas Administrative Code §111.201 and §330.15(a) and (c).

The hearing will allow Raul Gomez, 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 Raul Gomez, 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 Raul Gomez 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.** Raul Gomez, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and ch. 7, Tex. Health & Safety Code chs. 361 and 382, and 30 Texas Administrative Code chs. 70, 111, and 330; 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 John S. Merculief II, 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: June 11, 2019

TRD-201901775
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 12, 2019

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## Department of State Health Services

### Order Adding the Chemical Names of Five Substances that Fall within the Definition of Fentanyl-Related Substances; Extending the Temporary Scheduling of Six Synthetic Cannabinoids; and Temporarily Scheduling Five other Synthetic Cannabinoids

The Drug Enforcement Administration (DEA) is providing additional descriptive information with respect to five specific substances already covered by a temporary scheduling order that appeared in the *Federal Register* on February 6, 2018. That order placed fentanyl-related substances temporarily in schedule I of the Controlled Substances Act. The order further stated that if and when DEA identifies a specific new substance that falls under the definition of a fentanyl-related substance, the agency will publish in the *Federal Register,* and on the agency website, the chemical name of such substance. This notification provides the chemical names of five substances that fall within the definition of fentanyl-related substances that were temporarily controlled under the scheduling order issued February 6, 2018. This notification has the same effective period as the temporary scheduling order published on February 6, 2018 (83 FR 5188). This notification was published in the April 19, 2019, issue of the *Federal Register* (84 FR 16397). These substances are:

(1) 2'-fluoro *ortho*-fluorofentanyl;

(2)*ortho*-methyl acetylfentanyl;

(3) beta'-phenyl fentanyl;

(4) thiofuranyl fentanyl; and

(5) crotonyl fentanyl.

The Acting Administrator of the Drug Enforcement Administration is issuing a temporary scheduling order to extend the temporary schedule I status of six synthetic cannabinoids. The substances are: methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate [5F-MDMB-PINACA]; methyl-2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate [5F-AMB]; *N*-(adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide [5F-APINACA, 5F-AKB48]; *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide [ADB-FUBINACA]; methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate [MDMB-CHMICA, MMB-CHMINACA] and methyl 2-(1-(4-fluorobenzyl)-1*H*indazole-3-carboxamido)-3,3-dimethylbutanoate [MDMB-FUBINACA], including their optical, positional and geometric isomers, salts, and salts of isomers. This order is effective April 10, 2019, and expires on April 10, 2020, or until the permanent scheduling action for these six substances is completed, whichever occurs first. This order was published in the April 8, 2019, issue of the *Federal Register* (84 FR 13796)

The Acting Administrator of the Drug Enforcement Administration issued a temporary scheduling order placing the synthetic cannabinoids, ethyl 2-(1-(5-fluoropentyl)-1*H*indazole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5FEDMB-PINACA); methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-MDMB-PICA); *N*-(adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*indazole-3-carboxamide (trivial names:FUB-AKB48; FUB-APINACA; AKB48 N-(4-FLUOROBENZYL)); 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (trivial names: 5F-CUMYL-PINACA; SGT-25); and (1-(4-fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (trivial name: FUB-144), and their optical, positional, and geometric isomers, salts, and salts of isomers in schedule I. This order was published in the April 16, 2019 issue of the *Federal Register* (84 FR 15505). This action was taken based on the following:

1. Temporary placement of 5F-EDMB-PINACA, 5F-MDMBPICA, FUB-AKB48, 5F-CUMYL-PINACA, and FUB-144 into schedule I is necessary to avoid an imminent hazard to the public safety;

2. 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 have no accepted medical use in the United States;

3. Use of 5F-MDMBPICA, 5F-EDMB-PINACA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 has been reported to result in adverse effects in humans in the United States;

4. 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA and FUB-144 are pharmacologically related to other synthetic cannabinoids and are likely to produce signs of addiction and withdrawal similar to those produced by other synthetic cannabinoids.

**- Schedule I temporarily listed substances subject to emergency scheduling by the United States Drug Enforcement Administration.**

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts; isomers; optical, positional, and geometric isomers; esters; ethers; and salts of isomers, esters and ethers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) *N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylproprionamide, also known as *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidnyl]-*N*-phenylpropanamide (Other name: beta-hydroxythiofentanyl);

*(2) methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB; 5F-MDMB-PINACA);

*(3) methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-caboxamido)-3-methylbutanoate (Other names: 5F-AMB);

*(4) *N*-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide (Other names: 5F-APINACA, 5F-AKB48);

*(5) *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (Other names: ADB-FUBINACA);

*(6) methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA, MMB-CHMINACA);

*(7) methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-FUBINACA);

(8) methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (Other names: FUB-AMB, MMB-FUBINACA, AMB-FUBINACA);

(9) *N*-(2-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide (Other names: ortho-fluorofentanyl, 2-fluorofentanyl);

(10) 2-methoxy-*N*-(1-phenethylpiperidin-4-yl)-*N*-phenylacetamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: methoxyacetyl fentanyl);

(11) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopropanecarboxamide (Other name: cyclopropyl fentanyl);

(12) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: valeryl fentanyl);

(13) *N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: *para*-fluorobutyryl fentanyl);

(14) *N*-(4-methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: *para*-methoxybutyryl fentanyl);

(15) *N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: *para*-chloroisobutyryl fentanyl);

(16) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylisobutyramide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: isobutyryl fentanyl);

(17) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers (Other name: cyclopentyl fentanyl);

(18) Fentanyl-related substances, their isomers, esters, ethers, salts and salts of isomers, esters and ethers.

*(18-1) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under section 505 of the Federal Food, Drug, and Cosmetic Act [~~21 U.S.C. 355~~], that is structurally related to fentanyl by one or more of the following modifications:

(18-1-1) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(18-1-2) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino or nitro groups;

(18-1-3) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(18-1-4) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(18-1-5) Replacement of the *N*-propionyl group by another acyl group;

*(18-2) This definition includes, but is not limited to, the following substances:

*(18-2-1) *N*-(1-(2-fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide (2'-fluoro *ortho*-fluorofentanyl);

*(18-2-2) *N*-(2-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (*ortho*-methyl acetylfentanyl);

*(18-2-3) *N*-(1-phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide (beta'-phenyl fentanyl; hydrocinnamoyl fentanyl);

*(18-2-4) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide (thiofuranyl fentanyl);

*(18-2-5) (*E*)-*N*-(1-phenethylpiperidin-4-yl)-*N*phenylbut-2-enamide (crotonyl fentanyl);

(19) Naphthalen-1-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (other name: NM2201; CBL2201);

(20) *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (other name: 5F-AB-PINACA);

(21) 1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL BINACA; CUMYL-4CN-BINACA; SGT-78);

(22) methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (other names: MMB-CHMICA, AMB-CHMICA);

(23) 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[~~2,3-b~~]pyridine-3-carboxamide (other name: 5F-CUMYL-P7AICA);

(24) N-ethylpentylone (Other names: ephylone; 1-(1,3-benzodioxil-5-yl)-2-(ethylamino)-pentan-1-one);

*(25) ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate and their optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 5FEDMB-PINACA);

*(26) methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate and their optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 5F-MDMB-PICA);

*(27) *N*-(adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*indazole-3-carboxamide and their optical, positional, and geometric isomers, salts, and salts of isomers (Other names: FUB-AKB48; FUB-APINACA); AKB48 N-(4-FLUOROBENZYL));

*(28) 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide and their optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 5F-CUMYL-PINACA; SGT-25); and,

*(29) (1-(4-fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone their optical, positional, and geometric isomers, salts, and salts of isomers (Other name: FUB-144).

Changes are marked by an asterisk(*)

TRD-201901780
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: June 12, 2019

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## State Independent Living Council

Request for Proposal

The Texas State Independent Living Council (Texas SILC) is a nonprofit organization that assists Texans with a disability to live as independently as they choose. Texas SILC is federally authorized by the Rehabilitation Act of 1973 and Workforce Innovation Act of 2014 and develops the State Plan for Independent Living (SPIL) that serves as a strategic plan to employ Independent Living Services.

Texas SILC has partnered with the Administration for Community Living (ACL) to provide quality of life grants over the next three years to

community-based disability organizations serving people living with paralysis. For the purposes of this grant, the definition of paralysis refers to a range of disabling conditions due to stroke, spinal cord injury, multiple sclerosis, cerebral palsy or any central nervous system disorders that results in difficulty or the inability to move the upper or lower extremities. The goal of this pilot is to increase supports and services in rural and underserved areas of the State for Texans living with paralysis that will improve their opportunities to become more independent and integrated in the community of their choice.

Texas SILC is not a direct service provider and relies on community partners to provide direct services and supports for Texans with disabilities in order to fulfill the goals and objectives of the SPIL. Texas SILC has procured a telehealth-type platform (e.g. Zoom platform) and is searching for community-based organizations to provide virtual Independent Living Services to Texans living with paralysis in unserved or underserved areas of the State.

*The Virtual Independent Living Services* project will provide Texas community based organizations with a vested interest in serving people living with paralysis the virtual platform to provide independent living services and supports. The virtual platform will provide Texans living with paralysis access to a secure Health Insurance Portability and Accountability Act (HIPAA)-compliant platform to receive services and supports.

Individuals will be able to access this platform through a smart-phone application, tablet, computer, or by telephone. The goal of the virtual services platform is to bring services to hundreds of individuals living with paralysis who will not otherwise be able to access Independent Living Services due to lack of transportation, accessible housing, and personal care attendant support. This platform should also provide social interaction and support for people with paralysis who may be living with depression or other mental health issues. The virtual platform should offer greater access to independent living services to individuals and strengthen their network of peers and mentors.

The purpose of the project is to pilot and test the feasibility of providing Independent Living Services in a virtual service delivery model versus a traditional center-based or in-person structure. One-on-one meetings or small group discussions in a safe virtual space are a key component of the project. While creating a new video library of educational resources is an important tool, it is not the focus of this project. Small group discussions can occur within the scope of the project, but they should be live and interactive so Texans with paralysis can connect with peers, freely ask questions, and interact. If these small groups were recorded and made public, participation might be limited.

Specific examples of services that may be provided through virtual platform to Texans living with paralysis in unserved or underserved areas include but are not limited to: peer support; employment and career development training; personal care attendant management; money management and personal finance; healthy eating and adaptive fitness exercises; civic engagement in and out of institutions, state-facilities, and nursing homes; assistive technology and the use of applications to assist in daily living activities and at work; travel support and training; leadership and development; self and systems advocacy methods; accessible housing and transportation options and rights; resources for parents with disabilities; support groups and discussion topics for caregivers and family members; service animal options and rights; and other topics impacting Texans living with paralysis.

In the first year of the project, awards were provided to the following organizations:

- NMD United: NMD's partnership expands the organization's virtual university by developing workgroups and individualized support that is facilitated by peer experts on topics relevant to those living with neuromuscular paralysis. The virtual university sessions are recorded and published on NMD United's YouTube channel. VILS has provided the necessary funding to grow the Texas audience and employ expert facilitators and chapter administrators living with neuromuscular paralysis from Texas.

- National Spinal Cord Injury Association Houston: United Spinal Association of Houston's partnership has provided the expansion of virtual access to current programming related to peer mentoring and inclusive art and has afforded the opportunity for a confidential, online peer-to-peer discussion. Virtual peer support discussions include mental health, love, assistive technology, mobility, transportation, durable medical equipment, employment, and community resources and opportunities.

- Heart Of Central Texas Independent Living (HOCTIL): HOCTIL's partnership increases supports and services for individuals living with paralysis in rural and underserved areas of Texas and improves their opportunity to become more independent and integrated in the community of their choice, and decreases isolation as they become better connected with peers. Virtual trainings are adapted from *Living a Healthy Life with Chronic Conditions,* a proven self-management guide specifically for individuals with chronic conditions (paralysis), which consists of practical decision making tips, goal setting, and strategies to building resources and confidence in managing chronic symptoms, such as fatigue, pain, shortness of breath, disability, and depression.

More information about the project may be viewed on the Texas SILC's *Virtual Independent Living Services* project webpage at: https://www.txsilc.org/projects/vils.html.

Awarded organizations selected through this request for proposal (RFP) will be required to use and gain competence in the telehealth-type platform to be provided. The specifics of training and proficiency expectations will be discussed and agreed to prior to award.

As part of the grant partnership, Texas SILC is committed to providing technical assistance and training on the telehealth platform. Texas SILC will provide each awarded organization a toolkit to explain in detail what both awarded organizations and participating Texans will need to know to effectively use and leverage the technology. The toolkit will include outreach materials, instructional videos, and troubleshooting support.

The Texas SILC is accepting proposals from community-based organizations that serve people living with paralysis to employ a virtual Independent Living Services to Texans with paralysis. Proposals can be submitted until 5:00 p.m. Central Standard Time, Friday, August 16, 2019, via email to VILS@txsilc.org.

Up to six community-based disability organizations will receive up to $40,000 each to provide virtual Independent Living Services to Texans living with paralysis. All funds must be used in accordance to applicable federal laws and regulations.

An independent review panel will review all applications and make a recommendation for awards to the Texas SILC. Texas SILC will announce awards by 5:00 p.m. Central Standard Time, Tuesday, August 27, 2019.

Project services must start Monday, September 2, 2019, and must be concluded Tuesday, June 30, 2019. Awardees must report performance and financial data that measure the impact and effectiveness of the award by Friday, July 31, 2020.

Texas SILC requests community partners willing to participate in the *Virtual Independent Living Services* project to complete a proposal that ensures the following project objectives and outcomes are achieved.

Project outcomes include:

- Texans with paralysis living in unserved or underserved areas or representing an underserved population will have greater access to Independent Living Services in the environment they choose;

- Texans with paralysis will experience decreased isolation and will better connect with peers;

- The project will increase coalitions between community-based organizations providing supports and services to Texans with paralysis; and

- Texans with disabilities will have enhanced employment opportunities and have more strategies to thrive in the community of their choice.

Applicants interested in participating as a direct service provider in the project must submit a proposal that is no more than five single-spaced pages in Verdana 12-point font in Microsoft Word. Applicants must respond to the following items:

1. Organization Background: please provide the name of your organization, organization address, Tax ID Number, name of contact person, and contact information.

2. Narrative Description of the Project: please provide a narrative description of the type of virtual independent living services your organization plans to provide; milestones; how it will achieve project goals, objectives, and outcomes; and the data your organization will collect and report on that measures the impact and effectiveness of the award (e.g. Number of Texans living with paralysis who received an Independent Living Service). In this section, please include the purpose and scope of the project; the location of work; a description of the need for the project and solutions; the deliverables that are to be scheduled; and a timeline. Additional preference will be made for those community-based organizations that describe how the services are targeted to those populations listed in Section 3.2 of the SPIL. The SPIL may be viewed at the Texas SILC's website: www.txsilc.org.

3. Capacity: please provide an overview of your organization, leadership and staff expertise, organizational ability to provide financial management, and performance reporting. Please also provide a budget and budget justification for the project; type of payment schedule preferred (e.g. monthly; quarterly); and if and how the awarded funds will be used for travel.

Respondents are encouraged to provide as much detail in their proposals as possible regarding their community-based services in order to allow the independent review panel and the Texas SILC to accurately assess the best possible candidates. This is particularly valuable given the range of possible services responsive to this RFP.

Awarded organizations who receive an award up to a $40,000 grant under this RFP will not be considered for subsequent awards under this grant.

This grant was supported in part by grant number 90PRRC0002 from The United States Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their feelings and conclusions. Points of view or opinions do not, however, represent official Administration for Community Living policy.

Questions about this request for proposal must be submitted in writing via email to VILS@txsilc.org by 5:00 p.m. Central Standard Time, Friday, June 28, 2019. All answers will be subsequently published on Texas SILC's *Virtual Independent Living Services* project webpage: https://www.txsilc.org/projects/vils.html

Texas SILC looks forward to developing new partnerships to increase supports and services for Texans living with paralysis in underserved or unserved areas of the State. Additional *Virtual Independent Living Services* project funding opportunities may be available in the Winter of 2020.

TRD-201901751
Colton Read
Council Chair
State Independent Living Council
Filed: June 11, 2019

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## Texas Lottery Commission

### Scratch Ticket Game Number 2168 "50,000 Bonus Cashword"

Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2168 is "$50,000 BONUS CASHWORD". The play style is "crossword".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2168 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2168.

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: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y and Z.

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. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2168 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| A | |
| B | |
| C | |
| D | |
| E | |
| F | |
| G | |
| H | |
| I | |
| J | |
| K | |
| L | |
| M | |
| N | |
| O | |
| P | |
| Q | |
| R | |
| S | |
| T | |
| U | |
| V | |
| W | |
| X | |
| Y | |
| Z | |

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 Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2168), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2168-0000001-001.

H. Pack - A Pack of "$50,000 BONUS CASHWORD" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does

not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket, or Ticket - Texas Lottery "$50,000 BONUS CASHWORD" Scratch Ticket Game No. 2168.

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 "$50,000 BONUS CASHWORD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose one-hundred and one (101) Play Symbols. The player scratches all of the YOUR 20 LETTERS Play Symbols and the two BONUS LETTERS. Then the player scratches all the letters found in the $50,000 BONUS CASHWORD puzzle that exactly match the YOUR 20 LETTERS and BONUS LETTERS. If the player has scratched at least 3 complete WORDS, the player wins the prize found in the PRIZE LEGEND. Only one prize paid per ticket. Only letters within the $50,000 BONUS CASHWORD puzzle that are matched with the YOUR 20 LETTERS and BONUS LETTERS can be used to form a complete WORD. Every letter within an unbroken horizontal (left to right) or vertical (top to bottom) sequence must be matched with the YOUR 20 LETTERS and BONUS LETTERS to be considered a complete WORD. Words revealed in a diagonal sequence are not considered valid WORDS. Words within WORDS are not eligible for a prize. Words that are spelled from right to left or bottom to top are not eligible for a prize. A complete WORD must contain at least three letters. 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 one-hundred and one (101) 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; Crossword and Bingo games do not typical have Play Symbol Captions;

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 and Game-Pack-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 and Game-Pack-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 one-hundred and one (101) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-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 one-hundred and one (101) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the one-hundred and one (101) 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 Game-Pack-Ticket Number must be printed in the Game-Pack-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 Play Symbols.

B. GENERAL: There is no correlation between any exposed data on a Ticket and its status as a winner or non-winner.

C. CROSSWORD GAMES: The grid on each Ticket will contain exactly the same number of letters.

D. CROSSWORD GAMES: The grid on each Ticket will contain exactly the same number of words.

E. CROSSWORD GAMES: No matching words on a Ticket.

F. CROSSWORD GAMES: All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.2.0, dated January 31, 2019.

G. CROSSWORD GAMES: All words will contain a minimum of 3 letters.

H. CROSSWORD GAMES: All words will contain a maximum of 9 letters.

I. CROSSWORD GAMES: There will be a minimum of three (3) vowels in the YOUR 20 LETTERS and the BONUS LETTERS play areas. Vowels are considered to be A, E, I, O, U.

J. CROSSWORD GAMES: No consonant will appear more than nine (9) times, and no vowel will appear more than fourteen (14) times in the grid.

K. CROSSWORD GAMES: No matching Play Symbols in the YOUR 20 LETTERS play area.

L. CROSSWORD GAMES: At least fifteen (15) of the letters in the YOUR 20 LETTERS and BONUS LETTERS play areas will open at least one (1) letter in the grid.

M. CROSSWORD GAMES: The presence or absence of any letter or combination of letters in the YOUR 20 LETTERS and the BONUS LETTERS play areas will not be indicative of a winning or Non-Winning Ticket.

N. CROSSWORD GAMES: Words from the TEXAS REJECTED WORD LIST v.2.3, dated December 4, 2017, will not appear horizontally in the YOUR 20 LETTERS play area when read left to right or right to left.

O. CROSSWORD GAMES: On Non-Winning Tickets, there will be two (2) completed words in the grid.

P. CROSSWORD GAMES: There will be a random distribution of all Play Symbols on the Ticket, unless restricted by other parameters, play action or prize structure.

Q. CROSSWORD GAMES: There will be no more than twelve (12) complete words in the grid.

R. CROSSWORD GAMES: A Ticket can only win one (1) time.

S. CROSSWORD GAMES: The two (2) BONUS LETTERS Play Symbols will not match any of the YOUR 20 LETTERS Play Symbols on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50,000 BONUS CASHWORD" Scratch Ticket Game prize of $3.00, $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game Prize. 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 "$50,000 BONUS CASHWORD" Scratch Ticket Game prize of $5,000 or $50,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$50,000 BONUS CASHWORD" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$50,000 BONUS CASHWORD" 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 "$50,000 BONUS CASHWORD" 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.

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 35,760,000 Scratch Tickets in Scratch Ticket Game No. 2168. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2168 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|---|---|---|
| $3 | 3,933,600 | 9.09 |
| $5 | 2,002,560 | 17.86 |
| $10 | 1,716,480 | 20.83 |
| $15 | 500,640 | 71.43 |
| $20 | 429,120 | 83.33 |
| $50 | 143,040 | 250.00 |
| $100 | 58,110 | 615.38 |
| $500 | 2,980 | 12,000.00 |
| $5,000 | 89 | 401,797.75 |
| $50,000 | 18 | 1,986,666.67 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.07. 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. 2168 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. 2168, 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-201901748
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 11, 2019

♦ ♦ ♦

Scratch Ticket Game Number 2174 "20X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2174 is "20X". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2174 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2174.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 10X SYMBOL, 20X SYMBOL, $2.00, $3.00, $5.00, $10.00, $20.00, $40.00, $50.00, $100, $1,000 and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2174 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| 01 | ONE |
| 02 | TWO |
| 03 | THR |
| 04 | FOR |
| 05 | FIV |
| 06 | SIX |
| 07 | SVN |
| 08 | EGT |
| 09 | NIN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 17 | SVT |
| 18 | ETN |
| 19 | NTN |
| 10X SYMBOL | WINX10 |
| 20X SYMBOL | WINX20 |
| $2.00 | TWO$ |
| $3.00 | THR$ |
| $5.00 | FIV$ |
| $10.00 | TEN$ |
| $20.00 | TWY$ |
| $40.00 | FRTY$ |
| $50.00 | FFTY$ |
| $100 | ONHN |
| $1,000 | ONTH |
| $30,000 | 30TH |

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 Ticket number and the ten

(10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2174), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2174-0000001-001.

H. Pack - A Pack of the "20X" Scratch Ticket Game contains 125 Tickets. One Ticket will be folded over to expose a front and back of one ticket on each pack. Please note the packs will be in an A, B, C, and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "20X" Scratch Ticket Game No. 2174.

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 "20X" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. 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 "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the PRIZE for that symbol. 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 twenty-two (22) 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 and Game-Pack-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 and Game-Pack-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 twenty-two (22) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-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 twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-two (22) 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 Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., $2 and 02).

D. No matching WINNING NUMBERS Play Symbols on a Ticket.

E. A non-winning Prize Symbol will never match a winning Prize Symbol.

F. A Ticket may have up to two (2) matching non-winning Prize Symbols.

G. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

H. The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

I. The "20X" (WINX20) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "20X" Scratch Ticket Game prize of $2.00, $5.00, $10.00, $20.00, $40.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00, $50.00 or $100 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "20X" Scratch Ticket Game prize of $1,000 or $30,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "20X" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "20X" 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 "20X" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 2174. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2174 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in ** |
|---|---|---|
| $2 | 736,320 | 9.62 |
| $5 | 453,120 | 15.63 |
| $10 | 113,280 | 62.50 |
| $20 | 56,640 | 125.00 |
| $40 | 56,640 | 125.00 |
| $50 | 14,160 | 500.00 |
| $100 | 708 | 10,000.00 |
| $1,000 | 10 | 708,000.00 |
| $30,000 | 5 | 1,416,000.00 |

*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 4.95. 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. 2174 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2174, 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-201901749
Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 11, 2019

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## Public Utility Commission of Texas

### Notice of Application to Amend a Certificate of Convenience and Necessity

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 6, 2019, for a name change amendment to a certificate of convenience and necessity.

Docket Style and Number: Application of Consolidated Communications of Texas Company dba Consolidated Communications and Consolidated Communications of Fort Bend Company dba Consolidated Communications to Amend Certificate of Convenience and Necessity and to Rescind Certificate of Convenience and Necessity. Docket Number 49509.

The Application: Consolidated Communications of Texas Company and Consolidated Communications of Fort Bend Company seek to consolidate the service areas served under Consolidated Communications of Texas Company's certificate of convenience and necessity (CCN) number 40054 and terminate Consolidated Communications of Fort Bend Company's registration of CCN number 40031.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is July 15, 2019. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 49509.

TRD-201901773
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: June 12, 2019

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## Supreme Court of Texas

### In the Supreme Court of Texas

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 19-9041

## ORDER AMENDING RULE 6.3 OF THE RULES OF THE JUDICIAL BRANCH CERTIFICATION COMMISSION

**ORDERED** that:

1. In accordance with Act of May 21, 2019, 86th Leg., R.S., ch. 506 (S.B. 37), Rule 6.3 of the Rules of the Judicial Branch Certification Commission is amended, effective immediately.

3. The Clerk is directed to:

   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

Dated: June 11, 2019.

Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

Jeffrey V. Brown, Justice

James D. Blacklock, Justice

J. Brett Busby, Justice

## 6.3 Renewal of Certification or Registration

(a) Notwithstanding Rule 3.2(b), not later than the 30th day before the date a court reporter's or court reporting firm's certification or registration is scheduled to expire, the Commission will notify the reporter or firm of the impending expiration at the reporter's or firm's last known address according to the Commission's records. Failure to receive the notice does not exempt a court reporter or a court reporting firm from any requirements of these rules.

~~(b) Nonrenewal due to student loan default.~~

~~(1) The Commission must not renew the certification of a certified shorthand reporter who is designated to be in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) under Section 57.491(e) of the Education Code unless the reporter presents to the Board a certificate issued by TGSLC certifying that:~~

~~(A) the reporter has entered a repayment agreement on the defaulted loan; or~~

~~(B) the reporter is not in default on a loan guaranteed by TGSLC.~~

~~(2) The Commission must not renew the certification of a certified shorthand reporter who is designated to be in default on a repayment agreement with TGSLC under Section 57.491(g) of the Education Code unless the reporter presents to the Commission a certificate issued by TGSLC certifying that:~~

~~(A) the reporter has entered another repayment agreement on the defaulted loan; or~~

~~(B) the reporter is not in default on a loan guaranteed by TGSLC or on a repayment agreement.~~

~~(3) The Commission must provide a certified shorthand reporter an opportunity for a hearing under the procedures set out in Rule 5.10 prior to taking action concerning nonrenewal of certification for default on a student loan.~~

(b) ~~(c)~~ To qualify for renewal of certification or registration, a certified court reporter, court reporting firm, or affiliate office must pay all required fees, submit all required forms, and comply with renewal procedures. In addition, certified court reporters must comply with the Commission's continuing education requirements in Rules 4.1-4.3 and 6.6. An application for renewal must state:

(1) if the applicant is a court reporter, whether the applicant has been finally convicted of a criminal offense other than a minor traffic offense since the reporter's last certification;

(2) if the applicant is a court reporting firm or affiliate office, whether an officer, director, or managerial employee has been finally convicted of a criminal offense other than a minor traffic offense since the firm's or affiliate office's last registration; and

(3) if the applicant is a court reporter, whether the applicant has ever been the subject of a disciplinary action by a licensing authority in another jurisdiction requiring certification, registration, or licensure to provide court reporting services, and whether the applicant is the subject of a pending disciplinary action before the Commission, including actions in which the Commission imposed a sanction that has not been completed.

TRD-201901756
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: June 11, 2019



# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 19-9042

## ORDER REPEALING RULES FOR SUSPENSION OF ATTORNEYS IN DEFAULT ON GUARANTEED STUDENT LOANS

**ORDERED** that:

1. By order dated June 18, 1996 (Misc. Docket No. 96-9155), the Supreme Court adopted the Rules for Suspension of Attorneys in Default on Guaranteed Student Loans.

2. In accordance with Act of May 21, 2019, 86th Leg., R.S., ch. 506 (S.B. 37), the Rules for Suspension of Attorneys in Default on Guaranteed Student Loans are repealed, effective immediately.

3. The Clerk is directed to:

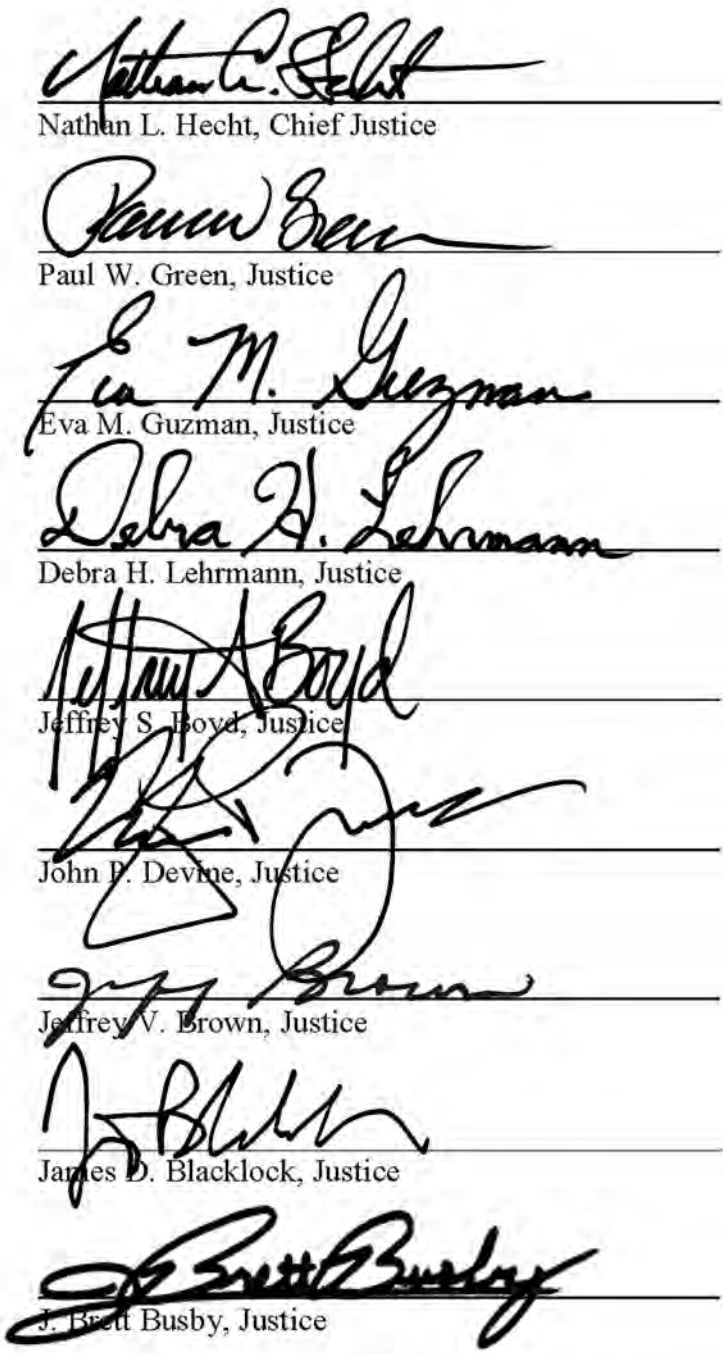
   a. file a copy of this order with the Secretary of State;

   b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this order to each elected member of the Legislature; and

   d. submit a copy of the order for publication in the *Texas Register*.

Dated: June 11, 2019.



Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

Jeffrey V. Brown, Justice

James D. Blacklock, Justice

J. Brett Busby, Justice

TRD-201901757
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: June 11, 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)*

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