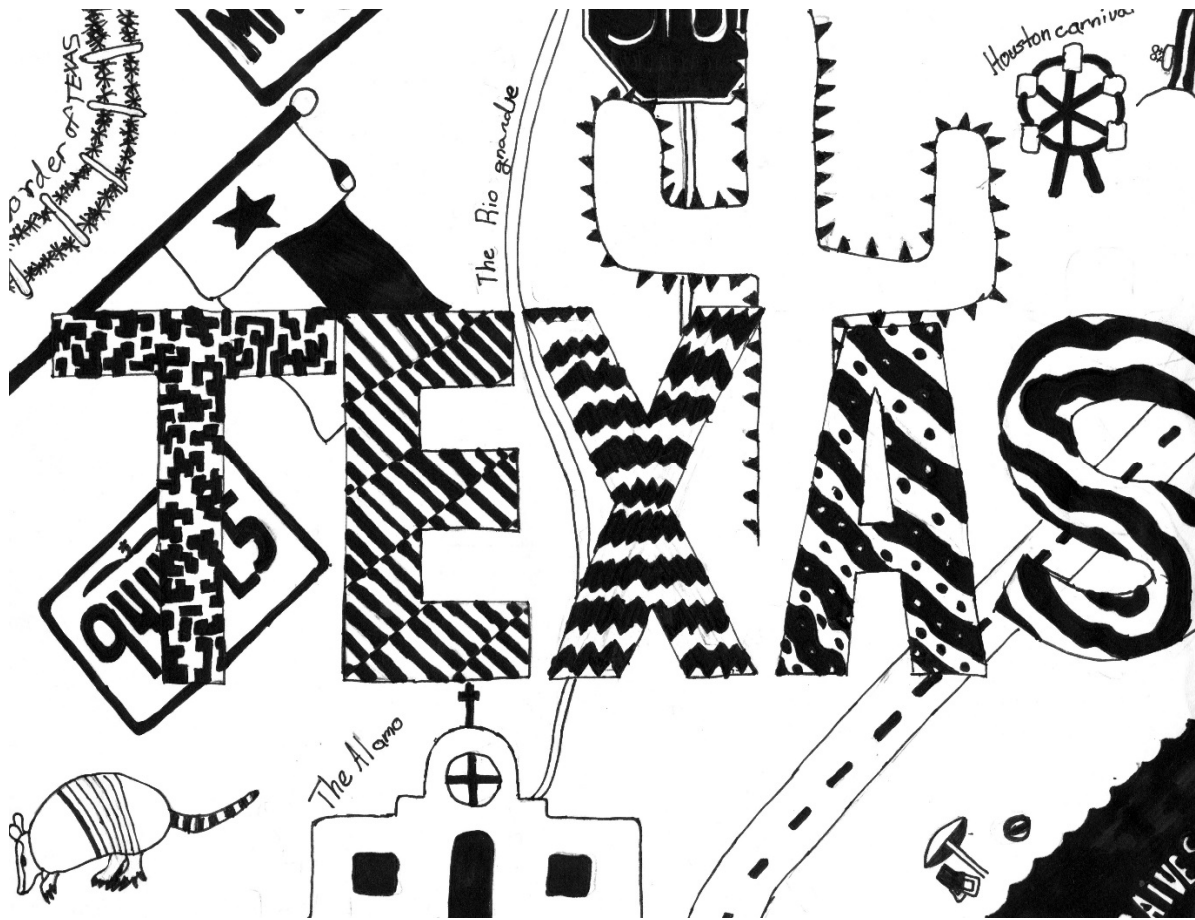


TEXAS REGISTER

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THE ATTORNEY GENERAL

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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-0288-KP

Requestor:

The Honorable William James Dixon
Navarro County Criminal District Attorney
Navarro County Courthouse
300 West Third, Suite 301
Corsicana, Texas 75110

Re: Whether probable cause affidavits that identify child victims may be released to the public upon a request made to the Justice of the Peace (RQ-0288-KP)

Briefs requested by June 12, 2019

RQ-0289-KP

Requestor:

The Honorable Bill Moore
Johnson County Attorney

Guinn Justice Center

204 South Buffalo Avenue, Suite 410

Cleburne, Texas 76033-5404

Re: Whether section 43.106 of the Local Government Code, requiring municipal annexation of county roads adjacent to annexed property, applies to voluntary annexations initiated pursuant to section 43.028 of the Local Government Code (RQ-0289-KP)

Briefs requested by June 12, 2019

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

TRD-201901423

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: May 14, 2019





EMERGENCY RULES

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 U. CITRUS CANKER QUARANTINE

4 TAC §§19.400 - 19.408

The Texas Department of Agriculture (the Department or TDA) adopts on an emergency basis new Title 4, Chapter 19, Subchapter U, Citrus Canker Quarantine, §§19.400 - 19.408, concerning citrus quarantine. The new sections are adopted on an emergency basis to establish requirements and restrictions necessary to address dangers posed by quarantined infestation of destructive strains of citrus canker in Cameron, Harris, and Fort Bend counties, and recently infested Brazoria County of Texas.

Citrus canker is a non-systemic plant disease caused by strains or pathotypes of the bacterium *Xanthomonas citri* subsp. *citri*. The disease produces leaf-spotting, fruit rind-blemishing, defoliation, shoot dieback, fruit drop, and can predispose fruit to secondary infection by decay organisms. Marketability of symptomatic fresh fruit is reduced. While leaf lesions 2-10 mm diameter may appear within 14 days following host inoculation, symptoms may take several weeks to a few months to appear. Lower temperatures may increase the latency of the disease. Citrus canker bacterium can stay viable on the tree or soil for several months in old lesions on leaves, branches and other plant surfaces. *X. citri* subsp. *citri* is spread by wind-borne rain, splashing water, movement of infected plant material or mechanical contamination.

The detection of plants infected with citrus canker necessitates an emergency response by the Department in order to timely and properly destroy infected plants to combat and slow the spread of this highly destructive plant pathogen in Texas and prevent its spread to other states. TDA promptly destroys all plants anywhere in the state that test positive for any strain of citrus canker, in accordance with statute, to prevent the further spread of canker. The adoption of emergency rules is necessary to prevent the spread of citrus canker, especially in the citrus zone, which will help to prevent potential devastation to the state's citrus industry.

The movement, distribution or sale of citrus plants within or out of the quarantined areas will be regulated as a result of the emergency rules. Equipment or material coming in direct contact with infected plant material must be decontaminated prior to moving out of the quarantined area using any approved decontaminant. The citrus fruits sold, distributed or moved to packing houses for

processing must be moved under the conditions of a compliance agreement.

The Department strongly urges residents in, and visitors to, the quarantined areas to be aware of the disease and may help combat it by contacting the Department, Texas A&M University (TAMU) AgriLife Extension, TAMU Kingsville-Citrus Center, USDA, or Texas Citrus Pest and Disease Management Corporation for more information.

The rules are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the Department to establish emergency quarantines; §73.004, which authorizes the Department to establish quarantines against citrus diseases and pests it determines are injurious; §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, 71 and 73.

§19.400. Quarantined Pest.

Quarantined pest is citrus canker, and its causal agent, the bacterial pathogen *Xanthomonas citri* subsp. *citri*. The quarantined pest is a serious plant disease that is not widely distributed in this state.

§19.401. Quarantined Areas.

(a) Quarantined areas are described in this section, and as defined on the Department's website at www.TexasAgriculture.gov. A map of the quarantined area is also available on the Department's website.

(b) Quarantined areas include:

(1) In Fort Bend and Harris Counties: The quarantine boundary is described as, starting at a point described as N29.7166139524 degrees and W95.6013268808 degrees, then South along Shady Breeze Drive to a point described as N29.7142932806 degrees and W95.6011334915 degrees, then East along Westpark Tollway to a point described as N29.7146800592 degrees and W95.5962987587 degrees, then South along Cook Road to a point described as N29.6763889689 degrees and W95.5959119801 degrees, then East along Bissonnet Street to a point described as N29.6655591655 degrees and W95.5885631843 degrees, then South East along Kirkwood Road to a point described as N29.6415788853 degrees and W95.5723184784 degrees, then East along West Airport Boulevard to a point described as N29.6440929481 degrees and W95.5388621218 degrees, then South East along South Loop 8 to a point described as N29.6172118282 degrees and W95.5595547819 degrees, then West along U.S. Highway 90 to a point described as N29.629588746 degrees and W95.5922375822 degrees, then South West along Interstate Highway 69 to a point described as

N29.6168250495 degrees and W95.6061616155 degrees, then South East to a point described as N29.611410147 degrees and W95.6030673847 degrees, then South West along Country Club Boulevard to a point described as N29.6048349094 degrees and W95.6104161804 degrees, then North West along William Trace Boulevard to a point described as N29.5974861137 degrees and 95.6222129303 degrees, then South West along Interstate Highway 69 to a point described as N29.6007737338 degrees and 95.6314956191 degrees, then North West along State Highway 6 to a point described as N29.6090894752 degrees and W95.6438725379 degrees, then South West along University Boulevard to a point described as N29.5936183274 degrees and W95.6492874387 degrees, then West along New Territory Boulevard to a point described as N29.5898513129 degrees and W95.6774894667 degrees, then North West along State Highway 99 to a point described as N29.6573433334 degrees and W95.7154981303 degrees, then North along Harlem Road to a point described as N29.6619612082 degrees and W95.7151429089 degrees, then East along Madden Road to a point described as N29.6620781561 degrees and W95.7057571299 degrees, then North to a point described as N29.6688467839 degrees and W95.7059505183 degrees, then East to a point described as N29.6688467839 degrees and W95.7028562893 degrees, then North to a point described as N29.6702005099 degrees and W95.7024695107 degrees, then East to a point described as N29.6698137304 degrees and W95.694540547 degrees, then North to a point described as N29.6707806779 degrees and W95.694540547 degrees, then East to a point described as N29.6713608449 degrees and W95.6800363467 degrees, then North to a point described as N29.683931153 degrees and W95.6810032933 degrees, then West to a point described as N29.6845113218 degrees and W95.7013091739 degrees, then North along Addicks Clodine Road to a point described as N29.7009494162 degrees and W95.7011157855 degrees, then East along Bellaire Boulevard to a point described as N29.700756026 degrees and W95.6846776911 degrees, then South along Chickory Woods Lane to a point described as N29.6984353533 degrees and W95.6846776911 degrees, then East along Espinosa Drive to a point described as N29.6982419649 degrees and W95.6792627885 degrees, then South along Caracas Drive to a point described as N29.6955345136 degrees and W95.6790693983 degrees, then East along Sinaloa Drive to a point described as N29.6959212931 degrees and W95.6765553373 degrees, then North along San Pablo Drive to a point described as N29.6966948504 degrees and W95.6755883907 degrees, then East along Alamos Drive to a point described as N29.697081629 degrees and W95.6653387553 degrees, then North East along Addicks Clodine Road to a point described as N29.7100387148 degrees and W95.6603106322 degrees, then East along Westpark Tollway to a point described as N29.7104254934 degrees and W95.653348616 degrees, then North along Cedar Gardens Drive to a point described as N29.7140998913 degrees and W95.6529618365 degrees, then East along West Bend Drive to a point described as N29.7144866699 degrees and W95.6444527058 degrees, then South East along Westpark Tollway to a point described as N29.7135197234 degrees and W95.6158310829 degrees, then North on Synott Road to a point described as N29.717000731 degrees and 95.6154443043 degrees, then East along Brant Rock Drive to the starting point.

(2) In Harris County: The quarantine boundary is described as, starting at the intersection of Stella Link Road and North Braeswood Boulevard, then westerly along North Braeswood Boulevard to its intersection with Academy Street, then northerly along Academy Street to its intersection with Merrick Street, then easterly along Merrick Street to its intersection with Stella Link Road, then northerly along Stella Link Road to its intersection with Blue Bonnet Boulevard, then easterly along Blue Bonnet Boulevard to its intersection with Sewanee Street, then northerly along Sewanee

Street to its intersection with Glen Haven Boulevard, then easterly along Glen Haven Boulevard to its intersection with Buffalo Speedway, then southerly along Buffalo Speedway to its intersection with South Braeswood Boulevard, then easterly along South Braeswood Boulevard to its intersection with Greenbush Drive, then southerly along Greenbush Drive to its intersection with Buffalo Speedway, then southerly along Buffalo Speedway to its intersection with Durhill Street, then westerly along Durhill Street to its intersection with Latma Drive, then northwesterly along Latma Drive to its intersection with Stella Link Road, then northerly along Stella Link Road to its intersection with Linkwood Drive, then northwesterly along Linkwood Drive to its intersection with South Braeswood Boulevard, then easterly along South Braeswood Boulevard to its intersection with Stella Link Road, then northerly along Stella Link Road to the starting point.

(3) In Cameron County: The quarantine boundary is described as, starting at a point described as N26.037815 degrees and W97.662652 degrees, then North West along U.S. Highway 281 to a point described as N26.043182 degrees and W97.662384 degrees, then North East along Farm to Market Road 732 to a point described as N26.045021 degrees and W97.666146 degrees, then North West along Joines Road to a point described as N26.07366 degrees and W97.640404 degrees, then North to a point described as N26.077092 degrees and W97.64515 degrees, then North East along Farm to Market Road 732 to a point described as N26.077092 degrees and W97.64515 degrees, then South East along Pennsylvania Avenue to a point described as N26.101461 degrees and W97.627285 degrees, then East along State Highway 100 to a point described as N26.073305515 degrees and W97.499314413 degrees, then South along Old Alice Road to a point described as N26.045394196 degrees and W97.504870042 degrees, then South West to a point described as N26.040001059 degrees and W97.510593706 degrees, then South to a point described as N26.003180323 degrees and W97.515121111 degrees, then East to a point described as N26.00304269 degrees and W97.512721575 degrees, then South to a point described as N26.0015193 degrees and W97.512867198 degrees, then East to a point described as N26.001250533 degrees and W97.508846831 degrees, then South to a point described as N25.995337159 degrees and W97.50931978 degrees, then East along Abilene Trail to a point described as N25.993839022 degrees and W97.495641435 degrees, then South along Stagecoach Trail to a point described as N25.978458918 degrees and W97.496850497 degrees, then West along Farm to Market Road 3248 to a point described as N25.945208997 degrees and W97.54445823 degrees, then North West along U.S. Highway 281 to a point described as N25.961952175 degrees and W97.578028281 degrees, then South to a point described as N25.944069784 degrees and W97.580010328 degrees, then North West along the Rio Grande River to the starting point.

(4) In Brazoria County and the adjacent area of Harris County: The quarantine boundary is described as, starting at a point described as N29.62598819 degrees and W95.266591998 degrees, then East along Alameda Genoa Road to a point described as N29.627130034 degrees and W95.249026799 degrees, then North East along Clearwood Drive to a point described as N29.632563989 degrees and W95.246256988 degrees, then North along Interstate Highway 45 to a point described as N29.651657784 degrees and W95.251359728 degrees, then East along Marleen Street to a point described as N29.652713805 degrees and W95.226735226 degrees, then South East along State Highway 3 to a point described as N29.637616657 degrees and W95.211540768 degrees, then South West along South Shaver Street to a point described as N29.626500058 degrees and W95.226619915 degrees, then South East along Interstate Highway 45 to a point described as N29.583976741 degrees and W95.181246397 degrees, then South West along Blue Spruce

Vale Way to a point described as N29.571100719 degrees and W95.195038307 degrees, then North West along Beamer Road to a point described as N29.572851511 degrees and W95.199176592 degrees, then South West along Dixie Farm Road to a point described as N29.5488365 degrees and W95.245129139 degrees, then North West along Farm to Market Road 518 to a point described as N29.564863322 degrees and W95.285403451 degrees, then North along State Highway 35 to a point described as N29.581828296 degrees and W95.286188027 degrees, then East along McHard Road to a point described as N29.582386972 degrees and W95.269586196 degrees, then North East along Pearland Parkway to the starting point.

§19.402. Regulated Articles Subject to the Quarantine.

(a) For purposes of this subchapter, a regulated article is a quarantined article defined under Texas Agriculture Code, §71.0092.

(b) Any other product, article, or means of conveyance, of any character whatsoever, not covered by subsection (a) of this section, when it is determined by an inspector that it presents a risk of spread of citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this subchapter.

(c) Any article that is described as a regulated article by Title 7, Code of Federal Regulations (CFR) §301.75-3.

§19.403. Restrictions on Movement, Sale, Distribution and Propagation of Articles Subject to the Quarantine.

(a) Movement of regulated articles.

(1) Regulated articles that are plants. Movement, sale or distribution through, within, into or from a quarantined area is prohibited, unless:

(A) authorized by the Department or USDA-APHIS-PPQ under a compliance agreement, limited permit or special permit; or

(B) within a given property, except, within 10 feet of where a plant which is symptomatic or diagnosed with citrus canker has been found, and the area has been treated according to a compliance agreement or permit issued by the Department or USDA.

(2) Regulated articles that are fruit. Regulated articles that are fruit that are moved from the property where they were produced, or are distributed or sold:

(A) must be free of leaves, stems and debris; or

(B) must be under a compliance agreement or permit issued by the Department or USDA.

(3) Fruit shall not be moved out of a quarantined area, except under a compliance agreement or special permit with the Department or the USDA.

(4) Landscapers and mowers. Landscapers and mowers servicing a quarantined area must come under a compliance agreement with the Department or USDA, and decontaminate tools, appliances and equipment by steam cleaning or by washing with an approved disinfectant prior to moving regulated articles out of the quarantined area.

(b) Transitory movement of regulated articles through a quarantined area shall be done only in a completely covered and enclosed insect-proof and water-proof container that shall not remain in the quarantined area beyond the time required for simple transit.

(c) Propagation, sale or distribution of regulated articles.

(1) Propagation and growing of any regulated articles that are plants, rootstock or budwood for movement or use inside, into or

from a quarantined area shall be in certified citrus nursery facilities under the requirements and restrictions in chapter 21, subchapter D, of this title, relating to "Citrus Nursery Stock Certification Program."

(2) Certified citrus nursery facilities shall comply with structural and sanitation requirements and restrictions applicable to interstate movement from citrus canker quarantined areas, as specified in the "Interstate Movement of Citrus Nursery Stock From Areas Quarantine for Citrus Canker, Citrus Greening, and/or Asian Citrus Psyllid" as published by USDA-APHIS-PPQ.

(d) Disposal of regulated articles. Infected plants, plant parts or regulated articles that are completely covered can move out of the quarantined area for burning or burial in a landfill under a compliance agreement or permit issued by the Department or USDA.

§19.404. Ongoing Pest Management.

At all times, all citrus plants for sale or distribution must be inspected regularly for symptoms of citrus canker. If any regulated article exhibits symptoms of citrus canker:

(1) the regulated article must be held at the location from sale or distribution, pending inspection, sampling and testing by the Department, and the location must immediately notify the nearest regional Department office; and

(2) plants or plant parts that test positive for citrus canker shall be destroyed and disposed of under Department supervision.

§19.405. Citrus Fruit Harvest.

(a) Compliance agreement required. Regulated fruit from a quarantined area intended for noncommercial or commercial movement, sale or distribution, shall not be moved from the production site, except under a compliance agreement with the Department or USDA.

(b) Disinfecting of regulated fruit.

(1) Disinfecting of regulated fruit shall include chemical treatment of regulated fruit, as prescribed in the USDA Treatment Manual D301.75-11(a).

(2) Following treatment of regulated fruit in accordance with this subsection, personnel must clean their hands as prescribed in the USDA Treatment Manual D301.75-11.

(3) Vehicles, equipment and other inanimate objects must be cleaned and treated as prescribed in the USDA Treatment Manual D301.75-11(d).

§19.406. Consequences for Failure to Comply with Quarantine Requirements or Restrictions.

(a) A person who fails to comply with quarantine restrictions or requirements or a Department order relating to the quarantine is subject to administrative or civil penalties up to \$10,000 per day for any violation of the order and to the assessment of costs for any treatment or destruction that must be performed by the Department in the absence of such compliance.

(b) The Department is authorized to seize and treat or destroy or order to be treated or destroyed, any regulated article:

(1) that is found to be infested with the quarantined pest; or

(2) regardless of whether infected or not, that is transported within, out of, or through the quarantined area in violation of this subchapter.

(c) Regulated articles seized pursuant to any Department order shall be destroyed at the owner's expense under the supervision of a Department inspector.

§19.407. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.408. Conflicts between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between geographical descriptions and representations and textual descriptions of the geographic area in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of regulated articles shall control.

(b) The textual description of the plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for exemption of compliance with the requirements of this subchapter.

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 May 9, 2019.

TRD-201901382

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Effective date: May 9, 2019

Expiration date: September 5, 2019

For further information, please call: (512) 463-4075



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.977

Pursuant to Parks and Wildlife Code, §12.027, the Texas Parks and Wildlife Department adopts, on an emergency basis, an amendment to §57.977, concerning Spawning Event Closures. The emergency action prohibits the take or attempted take of alligator gar on a segment of the Trinity River. Alligator gar are a nongame species under Parks and Wildlife Code, Chapter 67, and therefore subject to regulation by the Texas Parks and Wildlife Commission (Commission).

In 2014 the Commission adopted new §57.977 as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6495) to establish a process to allow the department to temporarily prohibit the take of alligator gar in places where they are spawning or are about to spawn. Alligator gar populations are believed to be declining throughout much of their historical range

in North America, which includes the Mississippi River system as well as the coastal rivers of the Gulf of Mexico from Florida to northern Mexico. Observed declines in other states, vulnerability to overfishing, and increased interest in the harvest of trophy gar indicate that a conservative management approach is warranted until populations and potential threats can be fully assessed. On that basis, the Commission in 2009 adopted a daily bag limit of one alligator gar per person, which was intended to protect adult fish while allowing limited harvest, thus ensuring population stability. Since 2009, the department has conducted (and is continuing to conduct) research to determine the estimated harvest of alligator gar, quantify reproduction, understand habitat usage, and determine geographic differences in populations. Initial analysis of the research data indicate that alligator gar in Texas have the greatest chance of spawning success if the creation of preferred spawning habitat (the seasonal inundation of low-lying areas of vegetation) occurs in late spring through early summer. Since each year does not necessarily bring seasonal inundation at the optimum time, spawning success varies greatly.

The Trinity River supports the most significant alligator gar fishery in Texas. Department data for the middle Trinity River indicate that between 1980 and 2018, high reproductive success occurred in 6 years (1980, 1989, 1990, 1991, 2007, and 2015). Because the conditions for spawning do not exist on a regular or cyclical basis, and because spawning occurs in shallow waters where numerous gar can be concentrated in one area, alligator gar are extremely vulnerable to harvest during spawning. To protect alligator gar from excessive harvest during spawning, the rule allows the executive director of the department to prohibit the take of alligator in an affected area, which is defined as "an area of fresh water containing environmental conditions conducive for alligator gar spawning" or "an area of fresh water where alligator gar are in the process of spawning activity." The rule defines "environmental conditions conducive for alligator gar spawning" as "the components of a hydrological state (including but not limited to water temperatures, duration and timing of flooding events, river discharge rates, and any other factors that are known to be conducive to gar reproduction) that are predictors of the likelihood of spawning activity of alligator gar." An emergency closure has been implemented once and that was in 2015 from May 12 through June 10.

Above average rainfall has recently occurred in the upper Trinity River watershed, and the potential for continued heavy rains could cause ongoing elevated river levels below the Dallas/Fort Worth metroplex to become favorable for alligator gar spawning activity. The department has selected as one of the trigger criteria of environmental conditions conducive for alligator gar spawning the designation of a moderate flood condition, as defined by U.S. Geological Survey gauges, as these levels are sufficient to permit significant inundation of adjacent low-lying areas to occur. Additionally, a water temperature of 68° F or higher, was selected as a trigger criterion because the literature suggests it is an optimum temperature for spawning. Based on the likelihood of additional rain and that water temperatures have recently exceeded 68° F, the department concludes that environmental conditions conducive for alligator gar spawning are occurring and will persist, and that there is therefore an immediate danger to alligator gar resources in the river extent from U.S. Highway 287 in Anderson and Freestone counties downstream to the State Highway 7 bridge in Leon and Houston counties, which must therefore be designated an affected area within which the take or attempted take of alligator gar is prohibited. As provided in §57.977, this emergency amendment will expire

when the department withdraws the emergency action, or 30 days from filing, whichever first occurs.

The amendment is adopted on an emergency basis under Parks and Wildlife Code, §12.027, which provides that if the commission or the executive director finds that there is an immediate danger to a species authorized to be regulated by the department, the commission or the executive director may adopt emergency rules as provided by Government Code, §2001.034.

§57.977. *Spawning Event Closures.*

(a) Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) Affected area--

(A) an area of fresh water containing environmental conditions conducive for alligator gar spawning; or

(B) an area of fresh water where alligator gar are in the process of spawning activity.

(2) Environmental conditions conducive for alligator gar spawning--the components of a hydrological state (including but not limited to water temperatures, timing and duration of flood events, river discharge rates, and any other factors that are known to be conducive to alligator gar reproduction) that are predictors of the likelihood of spawning activity of alligator gar.

(b) The Executive Director shall prohibit the take or attempted take of alligator gar in an affected area and shall provide appropriate notice to the public when the take or attempted take of alligator gar in

an affected area is prohibited. The Executive Director shall provide appropriate public notice as to when lawful fishing in the affected area or areas may resume. An action under this section shall not exceed 30 days in duration.

(c) No person may take or attempt to take alligator gar by any means in an affected area declared by the Executive Director under subsection (b) of this section until the Executive Director gives notice that the lawful take of alligator gar may resume.

(d) The Executive Director declares that portion of the Trinity River and tributary waters from the U.S. Highway 287 bridge in Anderson and Freestone counties downstream to the State Highway 7 bridge in Leon and Houston counties to be an affected area within which the take or attempted take of alligator gar is prohibited.

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 May 6, 2019.

TRD-201901332

Robert D. Sweeney, Jr.

General Counsel

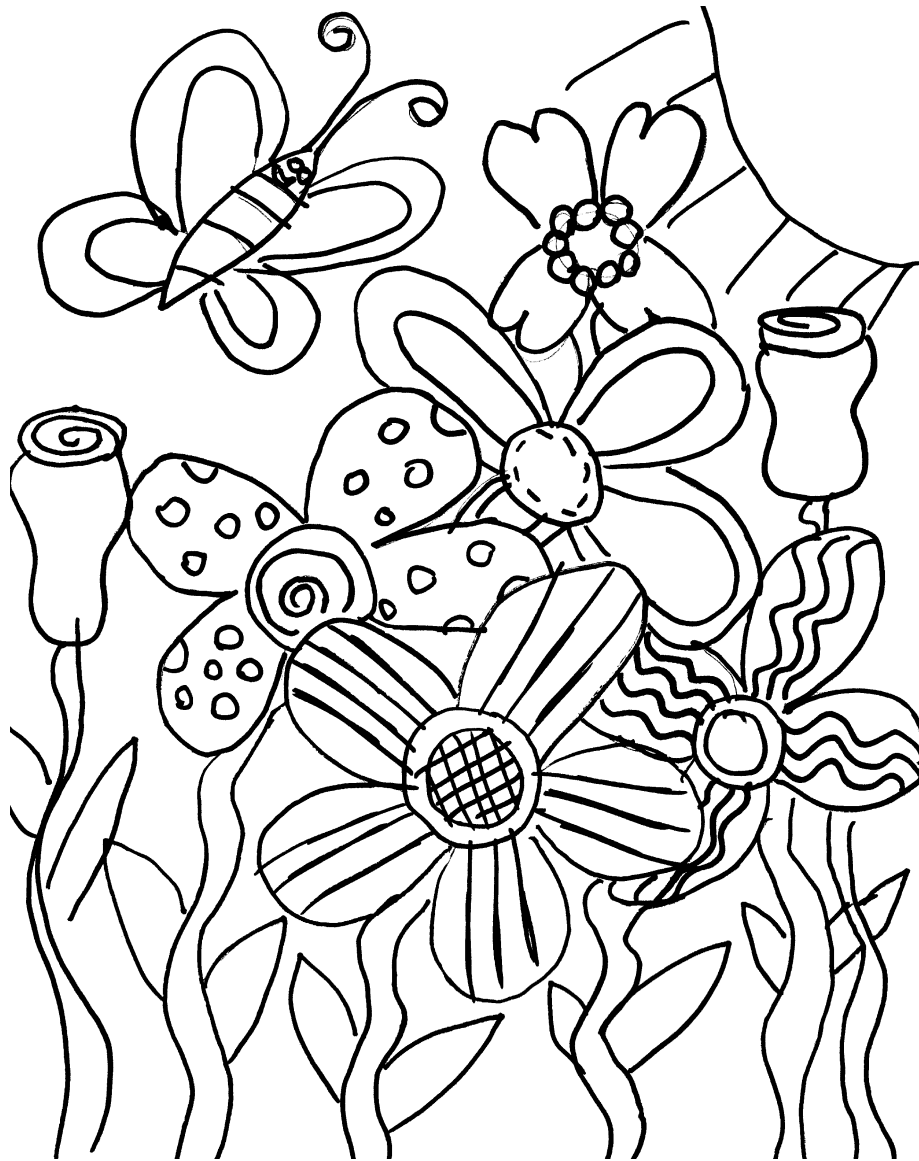
Texas Parks and Wildlife Department

Effective date: May 6, 2019

Expiration date: June 4, 2019

For further information, please call: (512) 389-4775

◆ ◆ ◆



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 206. STATE WEBSITES

SUBCHAPTER B. STATE AGENCY WEBSITES

1 TAC §206.54

The Texas Department of Information Resources (department) proposes an amendment to 1 TAC Chapter 206, §206.54, to ensure the rule accurately references current law.

In §206.54(a), the department proposes an amendment to correct an outdated rule reference.

The change to the chapter will have no effect on state agencies and institutions of higher education.

Endi Silva, Director of Technology Planning, Policy, and Governance, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal impact on state agencies and institutions of higher education to comply with the revisions to the rule. There is no impact on local government as a result of enforcing or administering the amended rule as proposed.

There is no impact on local government as a result of enforcing or administering the amended rule as proposed. There is no economic impact on rural communities or small businesses as a result of enforcing or administering the amended rule as proposed.

DIR submitted the proposed amendment to the Information Technology Council of Higher Education for their review and impact assessment. ITCHE had no comments and determined that there was no impact on institutions of higher education.

Pursuant to Texas Government Code §2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed amendment. 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 or elimination of 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 repeal an existing regulation.
7. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule does not positively or adversely affect the state's economy.

Written comments on the proposed amendment may be submitted to Christi Koenig Brisky, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to rule.review@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code, Chapter 2054. DIR has specific statutory authority to establish rules pertaining to state websites found in Texas Government Code §2054.261(b).

§206.54. Indexing.

(a) All new or changed documents on a state agency website that meet the criteria of a "state publication" as defined by the Texas State Library and Archives Commission must include the meta tags required by 13 TAC §3.3 [§3.4], when technically feasible.

(b) The home page of a state agency website must incorporate TRAIL meta data and must include links to the following State of Texas resources:

- (1) State electronic Internet portal, Texas.gov
- (2) Texas Homeland Security website
- (3) TRAIL, statewide search website
- (4) State Auditor's Office Fraud, Waste, or Abuse Hotline, and agency fraud policy, if applicable

(c) The home page or site policies page of a state agency website must include links to the following agency resources:

- (1) Agency linking notice
- (2) Agency privacy notice
- (3) Contact information
- (4) Agency policy and procedures relating to Open Records/Public Information Act
- (5) Compact with Texans
- (6) Agency electronic and information resources accessibility

- (A) Policy
- (B) Coordinator contact information

(d) Key public entry points must include links to the following agency resources:

- (1) Home page
- (2) Site policies page or contact information
- (3) Site policies page or linking notice
- (4) Site policies page or privacy notice
- (5) Agency electronic and information resources accessibility

- (A) Policy
- (B) Coordinator contact information

(e) A state agency must post on the agency's Internet website:

(1) For agency-awarded state grants in an amount greater than \$25,000, the purposes for which the grant was awarded, as specified in Texas Government Code, §403.0245.

(2) Agency information regarding accepted gifts, grants, donations or other consideration for any salary supplement for an agency employee, as specified in Texas Government Code, §659.0201.

(3) Agency information regarding staff compensation, as specified in Texas Government Code, §659.026.

(4) The agency's approved internal audit plan and agency annual report, including any required updates, as specified in Texas Government Code, §2102.015.

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 May 7, 2019.

TRD-201901346

Martin Zelinsky

General Counsel

Department of Information Resources

Earliest possible date of adoption: June 23, 2019

For further information, please call: (512) 475-4953



SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION WEBSITES

1 TAC §206.74

The Texas Department of Information Resources (department) proposes an amendment to 1 TAC Chapter 206, §206.74, concerning Indexing, to ensure the rule accurately references current law.

In §206.74(a), the department proposes the amendment to correct an outdated rule reference.

The change to the chapter will have no effect on state agencies and institutions of higher education.

Endi Silva, Director of Technology Planning, Policy, and Governance, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal impact on state agencies and institutions of higher education to comply with the revisions to the rule. There is no impact on local government as a result of enforcing or administering the amended rule as proposed.

There is no impact on local government as a result of enforcing or administering the amended rule as proposed. There is no economic impact on rural communities or small businesses as a result of enforcing or administering the amended rule as proposed.

DIR submitted the proposed amendments to the Information Technology Council of Higher Education for their review and impact assessment. ITCHE had no comments and determined that there was no impact on institutions of higher education.

Pursuant to Texas Government Code §2001.0221, the agency provides the following Governmental Growth Impact Statement for the proposed amendment. 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 or elimination of 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 repeal an existing regulation.
7. The proposed rule does not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rule does not positively or adversely affect the state's economy.

Written comments on the proposed amendment may be submitted to Christi Koenig Brisky, Assistant General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to review@dir.texas.gov. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed pursuant to Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to implement its responsibilities under Texas Government Code, Chapter 2054.

DIR has specific statutory authority to establish rules pertaining to state websites found in Texas Government Code §2054.261(b).

§206.74. Indexing.

(a) All new or changed documents on an institution of higher education website that meet the criteria of a "state publication" as defined by the Texas State Library and Archives Commission must include the meta tags required by 13 TAC §3.3 [§3-4], when technically feasible.

(b) The home page of an institution of higher education website must incorporate TRAIL meta data and must include links to the following State of Texas resources:

- (1) State electronic Internet portal, Texas.gov
- (2) Texas Homeland Security website
- (3) TRAIL, statewide search website
- (4) State Auditor's Office Fraud, Waste, or Abuse Hotline, and agency fraud policy, if applicable

(c) The home page or site policies page of an institution of higher education website must include links to the following institution of higher education resources:

- (1) Institution of higher education linking notice
- (2) Institution of higher education privacy notice
- (3) Contact information
- (4) Institution of higher education policy and procedures relating to Open Records/Public Information Act
- (5) Compact with Texans
- (6) Institution of higher education electronic and information resources accessibility
 - (A) Policy
 - (B) Coordinator contact information

(d) Key public entry points must include links to the following institution of higher education resources:

- (1) Home page
- (2) Site policies page or contact information
- (3) Site policies page or linking notice
- (4) Site policies page or privacy notice
- (5) Institution of higher education electronic and information resources accessibility
 - (A) Policy
 - (B) Coordinator contact information

(e) An institution of higher education must post on the institution's Internet website:

- (1) For institution-awarded state grants in an amount greater than \$25,000, the purposes for which the grant was awarded, as specified in Texas Government Code, §403.0245.
- (2) Institution information regarding accepted gifts, grants, donations or other consideration for any salary supplement for an institution employee, as specified in Texas Government Code, §659.0201.
- (3) Institution information regarding staff compensation, as specified in Texas Government Code, §659.026.
- (4) The institution's approved internal audit plan and agency annual report, including any required updates, as specified in Texas Government Code, §2102.015.

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 May 7, 2019.

TRD-201901347

Martin Zelinsky

General Counsel

Department of Information Resources

Earliest possible date of adoption: June 23, 2019

For further information, please call: (512) 475-4953



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1002

The Texas Education Agency (TEA) proposes the repeal of §97.1002, concerning accountability rating system provisions related to Hurricane Harvey. The proposed repeal is necessary because the Hurricane Harvey Provision applied only to excerpts of the *2018 Accountability Manual*, which will be replaced by the *2019 Accountability Manual* in August 2019.

BACKGROUND INFORMATION AND JUSTIFICATION: The TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year.

Effective August 14, 2018, §97.1002 adopted an excerpt of the *2018 Accountability Manual* into rule as a figure. The excerpt, Chapter 10 of the *2018 Accountability Manual*, described the Hurricane Harvey Provision used to evaluate school districts, open-enrollment charter schools, and campuses affected by Hurricane Harvey. The provision specified the criteria that school districts, open-enrollment charter schools, and campuses must have met in order to receive a *Not Rated* label due to the effects of Hurricane Harvey.

Because the provision applied only to 2018 accountability, §97.1002 is outdated and should be removed from rule.

FISCAL IMPACT: Jeff Cottrill, deputy commissioner for academics standards and engagement, 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 repeal an existing regulation. The proposed repeal would remove the excerpted section of the *2018 Accountability Manual* related to the Hurricane Harvey Provision since the provision applied only to 2018 accountability.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or limit 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. Cottrill 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 informing the public of the deletion of the Hurricane Harvey Provision, which applied to 2018 accountability rating methodology used to evaluate school districts, open-enrollment charter schools, and campuses affected by Hurricane Harvey. 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 May 24, 2019, and ends June 24, 2019. A public hearing on the proposal will be held at 8:30 a.m. on June 20, 2019, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at the hearing must sign in between 8:15 a.m. and 9:00 a.m. on the day of the hearing. The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Performance Reporting at (512) 463-9704. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §39.052(a) and (b)(1)(A), which require the commissioner to evaluate and consider the performance on achievement indicators, including those described in TEC, §39.053(c), when determining the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which allows the commissioner to adopt indicators and standards under TEC, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, which provides a process for a

school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; and TEC, §12.104(b)(2)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in TEC, Chapter 39.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 29.081(e), (e-1), and (e-2); and 12.104(b)(2)(L).

§97.1002. *Accountability Rating System Provisions Related to Hurricane Harvey.*

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 May 13, 2019.

TRD-201901407

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: June 23, 2019

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



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

22 TAC §531.3

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §531.3, in Chapter 531, Canons of Professional Ethics and Conduct. The proposed amendments to §531.3, Competency, clarify the definition of competency to conform with recent changes to §535.2, Broker Responsibility, which requires brokers to ensure their sponsored agents have geographic and property type competence.

Chelsea Buchholtz, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for local government as a result of enforcing or administering the amended sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed

amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity for license holders to understand their responsibilities to the public.

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

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

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by the proposed amendments is Chapter 1101, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§531.3. Competency.

It is the obligation of a license holder [real estate agent] to be knowledgeable and competent as a real estate brokerage practitioner. The license holder must [agent should]:

- (1) be informed on local market issues and conditions affecting [the] real estate in the geographic area where a license holder provides services to a client [business and pledged to continuing education in the intricacies involved in marketing real estate for others;]
- (2) be informed on national, state, and local issues and developments in the real estate industry; [and]
- (3) exercise judgment and skill in the performance of brokerage activities [the work]; and
- (4) be educated in the characteristics involved in the specific type of real estate being brokered for others.

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 May 8, 2019.

TRD-201901369

Chelsea Buchholtz
General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: June 23, 2019

For further information, please call: (512) 936-3177



CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER D. THE COMMISSION

22 TAC §535.43

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.43, Education Standards Advisory Committee, in Chapter 535, General Provisions. The amendment extends the existence of the Education Standards Advisory Committee to 2025 to mirror the next sunset review of TREC.

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

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of the amendment will be the continued review and revision of curriculum standards and course content requirements for qualifying and continuing education courses by subject matter experts in the field.

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

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

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics

for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.43. *Education Standards Advisory Committee.*

(a) - (o) (No change.)

(p) The committee is automatically abolished on September 1, 2025 [September 1, 2020] unless the Commission subsequently establishes a different 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 May 8, 2019.

TRD-201901370

Chelsea Buchholtz

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: June 23, 2019

For further information, please call: (512) 936-3177



SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.61, §535.65

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.61, Approval of Providers of Qualifying Courses, and §535.65, Responsibilities and Operations of Providers of Qualifying Courses, in Chapter 535, General Provisions. The proposed amendments to §535.61 add clarifying terms or timeframes for greater understanding and compliance. The proposed amendments also provide that a provider cannot enroll students in a course 60 days before the expiration of the provider's approval, unless they have submitted an application for a subsequent approval at least 60 days prior to the expiration of the current approval. This will offer greater protection for students who enroll in courses near the end of a provider's approval term and give providers a way to avoid any business disruption when applying for a subsequent approval. The Education Standards Advisory Committee looked at the passage rate calculation rule and related statute as directed by the Commission and concluded that the current calculation is appropriate and able to be readily calculated. They also concluded that displaying the passage rates on the website is helpful to consumers. Therefore, no changes were made to the passage rate section except to add how many decimal points are used for the figures.

The proposed amendments to §535.65 add that a provider must provide a hyperlink or URL to the TREC website when displaying exam passage rates in any advertisement. This will ensure that the consumers can verify the most current passage rate figures and related information for any or all providers. In addition, amendments to §535.65 eliminate the waiting period before retesting for students who fail a course exam, leaving the decision as to remedial course work before the retest to the

providers. Finally, §535.65 was updated to reflect the changes made to §535.63 due to the Sunset Advisory Commission Report directive that instructors of courses be approved by providers and not licensed by the Commission, but retains the ability of the Commission to set qualifications and standards of instructors for TREC approved courses.

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

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater clarity in the rules, making it easier for providers to submit applications and acceptable courses without any disruption to their business, and compliance with Sunset Advisory Commission directives.

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

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

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.61. *Approval of Providers of Qualifying Courses.*

(a) Application for approval.

(1) Unless otherwise exempt under subsection (b) of this section, a person desiring to be approved by the Commission to offer real estate or real estate inspection qualifying courses shall:

(A) file an application on the appropriate form approved by the Commission, with all required documentation;

(B) submit the required fee under §535.101 or §535.210 of this title (relating to Fees);

(C) submit the statutory bond or other security acceptable to the Commission under §1101.302 of the Act; and

(D) maintain a fixed office in the state of Texas or designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the provider is required to maintain by this Subchapter.

(2) - (3) (No change.)

(b) Exempt Providers.

(1) The following persons may submit real estate qualifying courses for approval for credit ~~in~~ [under] §535.62(i) of this subchapter (relating to Approval of Qualifying Courses) without becoming an approved provider of qualifying courses:

(A) a person approved by a real estate regulatory agency to offer qualifying real estate courses in another state that has approval requirements for providers that are substantially equivalent to the requirements for approval in this state;

(B) an accredited college or university in accordance with §535.66 of this subchapter (relating to Credit for Courses Offered by Accredited Colleges or Universities) where courses are offered in accordance with national or regional accreditation standards;

(C) a post-secondary educational institution established in and offering qualifying real estate courses in another state;

(D) a United States armed forces institute; and

(E) a nationally recognized professional designation institute or council in the real estate industry.

(2) The following persons may submit real estate inspector qualifying courses for approval for credit under §535.62(i) of this subchapter without becoming an approved provider of qualifying courses:

(A) a provider approved by an inspector regulatory agency of another state that has approval requirements for providers that are substantially equivalent to the requirements for approval in this state;

(B) an accredited college or university in accordance with §535.66 of this subchapter where courses are offered in accordance with national or regional accreditation standards;

(C) a United States armed forces institute;

(D) a unit of federal, state or local government;

(E) a nationally recognized building, electrical, plumbing, mechanical or fire code organization;

(F) a professional trade association in the inspection field or in a related technical field; or

(G) an entity whose courses are approved and regulated by an agency of this state.

(c) Standards for approval. To be approved as a provider by the Commission, the applicant must meet the following standards:

(1) the applicant must satisfy the Commission as to the applicant's ability to administer courses with competency, honesty, trustworthiness and integrity. If the applicant proposes to employ another person to manage the operation of the applicant, that person must meet this standard as if that person were the applicant;

(2) the applicant must demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students taking courses ~~[from the approved provider];~~ and

(3) that any proposed facilities will be adequate and safe for conducting courses.

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

(h) Statutory bond or other security. An approved provider whose statutory bond or other security has been cancelled will be placed on inactive status until the bond or security is reinstated.

(i) [(h)] Payment of an annual operation fee.

(1) An approved provider shall submit the Commission approved form and pay an annual operation fee prescribed by §535.101 of this title no later than the last day of the month of each anniversary ~~[of the]~~ date of the provider's approval.

(2) An approved provider who fails to pay the annual operation fee as prescribed shall be placed on inactive status and notified in writing by the Commission.

(3) The approved provider will remain on inactive status and unable to offer courses until the annual fee is paid.

(4) The Commission will not give credit for courses offered ~~[given]~~ by a provider on inactive status.

(j) [(i)] Disapproval of application.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission will provide written notice of disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section shall be in Travis County.

(k) [(j)] Subsequent Approval.

(1) A provider may not enroll a student in a course during the 60-day period immediately before the expiration of the provider's current approval unless the provider has submitted an application [Not earlier than 90 days before the expiration of its current approval, an approved provider may apply] for subsequent approval for another four year period not later than the 60th day before the date of expiration of its current approval.

(2) Approval or disapproval of a subsequent application shall be subject to:

(A) the standards for initial applications for approval set out in this section; and

(B) whether the approved provider has met or exceeded the exam passage rate benchmark established by the Commission under subsection (l) of this section ~~[(k)]~~.

(3) The Commission will not require a financial review for subsequent approval if the applicant has provided a statutory bond or other security acceptable to the Commission under §1101.302 of the Act, and there are no unsatisfied final money judgments against the applicant.

(l) [(k)] Exam passage rates and benchmark.

(1) The exam passage rate for an approved provider shall be:

(A) calculated for each license category for which the provider offers courses; and

(B) displayed on the Commission website by license category.

(2) A student is affiliated with a provider under this subsection if the student took the majority of his or her qualifying education with the provider in the two year period prior to taking the exam for the first time.

(3) [(2)] The Commission will calculate the exam passage rate of an approved provider on a monthly basis, rounded to two decimal places on the final calculated figure, by:

(A) determining the number of students affiliated with that approved provider who passed the examination on their first attempt in the two-year period ending on the last day of the previous month; and

(B) dividing that number by the total number of students affiliated with that provider who took the exam for the first time during that same period.

~~[(3) A student is affiliated with a provider under this subsection if the student took the majority of his or her hours of qualifying education with the provider in the two year period prior to taking the exam for the first time.]~~

(4) For purposes of approving a subsequent application under subsection (j), the established exam passage rate benchmark for each license category is 80% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month.

(5) If at the time the Commission receives a subsequent application from the provider requesting approval for another four year term ~~[for a provider]~~, the provider's exam passage rate does not meet the established benchmark for a license category the provider will be:

(A) denied approval to continue offering courses ~~[disapproved]~~ for that license category if the provider's exam passage rate is less than 50% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month; or

(B) placed on probation by the Commission if the provider's exam passage rate is greater than 50% but less than 80% ~~[or greater]~~ of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month.

(6) The exam passage rate of a provider on probation will be reviewed annually at the time the annual operating fee is due to determine if the provider can be removed from probation, remain on probation or have its license revoked, based on the criteria set out in paragraph (5) of this subsection.

§535.65. Responsibilities and Operations of Providers of Qualifying Courses.

(a) (No change.)

(b) Use of Qualified ~~[approved]~~ Instructor.

(1) Except as provided by this subsection, a provider must use an instructor that is currently qualified under §535.63 of this subchapter (relating to Approval of Instructors of Qualifying Courses) ~~[approved by the Commission]~~ to teach the specified course.

(2) Each instructor shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor.

(3) A provider shall require specialized training or work experience for instructors teaching specialized subjects such as law, appraisal, investments, taxation or home inspection.

(4) An instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval.

(5) A provider may use the services of a guest instructor who does not meet the instructor qualifications under §535.63 of this subchapter ~~[is not approved as an instructor by the Commission]~~ for qualifying real estate or inspector courses provided that person instructs for no more than 10% of the total course time.

(c) Advertising.

(1) The following practices are prohibited:

(A) using any advertising which does not clearly and conspicuously contain the provider's name on the first page or screen of the advertising;

(B) representing that the provider's program is the only vehicle by which a person may satisfy educational requirements;

(C) conveying a false impression of the provider's size, superiority, importance, location, equipment or facilities, except that a provider may use objective information published by the Commission regarding pass rates if the provider also displays next to the passage rate in a readily noticeable fashion:~~[:]~~

(i) A hyperlink to the Commission website's Education Provider Exam Passage Rate page labeled "TREC Provider Exam Pass Rates" for digital media; or

(ii) A URL to the Commission website's Education Provider Exam Passage Rate page labeled "TREC Provider Exam Pass Rates" for non-digital media;

(D) promoting the provider directly or indirectly as a job placement agency, unless the provider is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program;

(E) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression;

(F) advertising a course under a course name other than the course name approved by the Commission; or

(G) advertising using a name that implies the course provider is the Texas Real Estate Commission, including use of the acronym "TREC", in all or part of the course provider's name.

(2) Any written advertisement by a provider that includes a fee that the provider charges for a course must display any additional fees that the provider charges for the course in the same place in the advertisement and with the same degree of prominence.

(3) The provider shall advertise a course for the full clock hours of time for which credit is awarded.

(4) The provider is responsible for and subject to sanctions for any violation of this subsection by any affiliate or other third party marketer or web hosting site associated with or used by the provider.

(d) Pre-enrollment agreements for approved providers.

(1) Prior to a student enrolling in a course, a provider approved by the Commission shall provide the student with a pre-enrollment agreement that includes all of the following information:

- (A) the tuition for the course;
- (B) an itemized list of any fees charged by the provider for supplies, materials, or books needed in course work;
- (C) the provider's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily;
- (D) the attendance requirements;
- (E) the acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions;
- (F) the procedure and fees, if applicable, associated with exam proctoring;
- (~~F~~) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits; and
- (G) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits; and
- (H) [~~G~~] the notices regarding potential ineligibility for a license based on criminal history required by Section 53.152, Texas Occupations Code.

(2) A pre-enrollment agreement must be signed by a representative of the provider and the student.

- (e) (No change.)
- (f) Course materials.

(1) Before the course starts, a provider shall give each student copies of or, if a student has online access, provide online access to any materials to be used for the course.

(2) A provider shall update course materials to ensure that current and accurate information is provided to students as provided for under §535.62 of this title (relating to Approval of Qualifying Courses).

(g) Presentation of courses.

(1) Classroom Delivery:

(A) The location for the course must be:

- (i) conducive to instruction, such as a classroom, training room, conference room, or assembly hall that is separate and apart from work areas;
 - (ii) adequate for the class size;
 - (iii) pose no threat to the health or safety of students;
- and
- (iv) allow the instructor to see and hear each student and the students to see and hear the instructor, including when offered through the use of technology.

(B) The provider must:

- (i) check the photo identification of each student at class sign up and when signing in for each subsequent meeting of the class;
- (ii) ensure the student is present for the course for the hours of time for which credit is awarded;

(iii) provide a 10 minute break per hour at least every two hours; and

(iv) not have daily course segments that exceed 12 hours.

(C) If the course is a qualifying or non-elective continuing education course delivered through the use of technology and there are more than 20 students registered for the course, the provider will also use:

(i) a monitor at the broadcast origination site to verify identification of each student, monitor active participation of each student and facilitate questions for the instructor; and

(ii) a proctor at each remote site with more than 20 students to verify identification of each student, monitor active participation of each student and proctor any on-site examination.

(D) Makeup Session for Classroom Courses.

(i) A provider may permit a student who attends at least two-thirds of an originally scheduled qualifying course to complete a makeup session to satisfy attendance requirements.

(ii) A member of the provider's staff must approve the makeup procedure to be followed. Acceptable makeup procedures are:

(I) attendance in corresponding class sessions in a subsequent offering of the same course; or

(II) the supervised presentation by audio or video recording of the class sessions actually missed.

(iii) A student shall complete all class makeup sessions no later than the 90th day after the date of the completion of the original course.

(iv) A student who attends less than two-thirds of the originally scheduled qualifying course is not eligible to complete a makeup session. The student shall automatically be dropped from the course with no credit.

(2) Distance Education Delivery. The provider must ensure that:

(A) the student taking all topics of the course and completing all quizzes and exercises is the student receiving credit for the course through a student identity verification process acceptable to the Commission;

(B) a qualified [~~an approved~~] instructor is available to answer students' questions or provide assistance as necessary in a timely manner;

(C) a student has completed all instructional modules and attended any hours of live instruction required for a given course; and

(D) a qualified [~~an approved~~] instructor is responsible for providing answers and rationale for the grading of the written course work.

(3) A provider is not required to present topics in the order outlined for a course on the corresponding course approval form.

(4) The periods of time prescribed to each unit of a topic for a qualifying course as outlined on the corresponding course approval form are recommendations and may be altered to allow instructors flexibility to meet the particular needs of their students.

(h) (No change.)

(i) Subsequent final course examination.

(1) If a student fails a final course examination, a provider may permit the student to take a subsequent final examination only after the student has^[:]

~~(A)~~ waited at least three calendar days; and]

~~(B)~~ completed any additional course work prescribed by the provider.

(2) A student shall complete the subsequent final examination no later than the 90th day after the date the original class concludes. The subsequent final examination must be a different version of the original final examination given to the student and must comply with §535.62(b)(1)(G) and subsection (h) of this section.

(3) If a student fails to timely complete the subsequent final examination as required by this subsection, the student shall be automatically dropped from the course with no credit.

(4) A student who fails the final course examination a second time is required to retake the course and the final course examination.

(j) Course completion certificate.

(1) Upon successful completion of a qualifying course, a provider shall issue a course completion certificate that a student can submit to the Commission. The course completion certificate shall show:

(A) the provider's name and approval number;

(B) the instructor's name ~~[and instructor license number assigned by the Commission];~~

(C) the course title;

(D) course numbers;

(E) the number of classroom credit hours;

(F) the course delivery method;

(G) the dates the student began and completed the course; and

(H) printed name and signature of an official of the provider on record with the Commission.

(2) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(3) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(k) - (m) (No change.)

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

Filed with the Office of the Secretary of State on May 8, 2019.

TRD-201901371

Chelsea Buchholtz

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: June 23, 2019

For further information, please call: (512) 936-3177



22 TAC §535.63

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.63, Approval of Instructors of Qualifying Courses, in Chapter 535, General Provisions. The proposed amendments to §535.63 are made in direct response to the Sunset Advisory Commission Report, which directs the elimination of TREC's authority to approve real estate and inspector instructors but retains the ability to set qualifications and standards of instructors for TREC approved courses. In the proposed amendments, TREC will rely on approved providers to hire qualified instructors for all qualifying courses based on criteria outlined in the proposed amendments.

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

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be a more streamlined approach, thereby increasing efficiency, eliminating fees for instructors, and allowing the Commission to dedicate limited resources to activities that directly impact consumer protection.

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

create or eliminate a government program;

require the creation of new employee positions or the elimination of existing employee positions;

require an increase or decrease in future legislative appropriations to the agency;

create a new regulation;

expand, limit or repeal an existing regulation;

increase or decrease the number of individuals subject to the rule's applicability;

positively or adversely affect the state's economy.

For each year of the first five years the proposed amendments are in effect the amendments will, however, require a decrease in fees paid to the agency. The Sunset Advisory Commission estimated that by eliminating the approval process for real estate and inspector instructors, the approximate annual loss to TREC will be \$174,750 from licensing fees. TREC charges \$150 for two-year approvals, renewals, and reinstatements for real estate education instructors. In fiscal year 2017, TREC received 447 initial approval applications, 469 renewal applications, and 232 reinstatement applications for real estate instructors. TREC also charges \$50 for two-year approvals, renewals, and reinstatements for inspector instructors. In fiscal year 2017, TREC received 24 approval applications, 23 renewal applications, and for reinstatement applications from inspector instructors. (See page 30 of the Sunset Advisory Commission Staff Report with Commission Decisions for TREC 2018-2019).

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.63. *Qualifications for [Approval of] Instructors of Qualifying Courses.*

(a) A provider must ensure that an instructor who teaches [Application for approval.]

[(1) A person desiring to be approved by the Commission to teach] real estate or real estate inspection qualifying courses is competent[shall:]

[(A) file an application on the appropriate form approved by the Commission; and]

[(B) submit the required fee required by §535.101 or §535.210 of this title.]

[(2) The Commission may:]

[(A) request additional information be provided to the Commission relating to an application; and]

[(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.]

[(b) Standards for instructor approval: To be approved as an instructor by the Commission to teach real estate or real estate inspection qualifying courses, the applicant must meet the following standards:]

[(1) The applicant must satisfy the Commission as to:]

[(A) the applicant's honesty, trustworthiness, and integrity; and]

[(B) the person's competency] in the subject matter to be taught and has the ability to teach effectively.

[(b) [(2)] Except as provided by subsection (c) of this section [paragraph (3) of this subsection], the provider [applicant] must use an instructor who possesses [possess] the following qualifications:

(1) [(A)] a college degree in the subject area to be taught and three years of experience in teaching or training;

(2) [(B)] five years of active experience as a license holder (broker for Real Estate Brokerage and Broker Responsibility courses) and three years of experience in teaching or training; or

(3) [(C)] the equivalent of subsection (b)(1) or (2) [paragraph (2)(A) or (B)] of this section [subsection] as determined by the provider [Commission] after consideration of the instructor's [applicant's] professional experience, research, authorship, or other significant endeavors in real estate or real estate inspection.]; and]

[(D) provide a completion certificate from an in-person classroom adult education instructor training course of at least 8 hours

that is acceptable to the Commission and dated within four years of the date of application.]

(c) For [(3) To be approved as an instructor of] Texas Standards of Practice, Standards of Practice Review, or Inspector Legal and Ethics, the provider must use [or as an instructor of a ride along inspection course as defined in §535.218 of this title,] an instructor who has [applicant must have] five years of active licensure as a Texas professional inspector, and has [have]:

(1) [(A)] performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(2) [(B)] three years of experience in teaching and/or sponsoring trainees or inspectors.

[(4) To be approved as an instructor of a Commission approved adult education instructor training course, an applicant must satisfy the Commission that the applicant:

[(A) is currently approved to teach an adult education certification course accepted by the Commission for credit under paragraph (2)(D) of this subsection, such as CREI or IPI;]

[(B) has a college degree in adult education from an accredited college or university and two years of recent experience training adult educators; or]

[(C) the equivalent of paragraph (4)(A) or (B) of this subsection as determined by the Commission after consideration of the applicant's professional experience, references, research, authorship, or other significant endeavors in training adult educators.]

[(e) Approval notice: An applicant shall not act as or represent that the applicant is an approved instructor until the applicant has received written notice of the approval from the Commission to teach specified courses.]

[(d) Period of approval: The approval of an instructor is valid for two years.]

[(e) Disapproval of an application.]

[(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission shall disapprove the application and provide written notice of the disapproval to the applicant.]

[(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section shall be in Travis County.]

[(f) Subsequent approval.]

[(1) Not earlier than 90 days before the expiration of its current approval, an approved instructor may apply for subsequent approval for another two year period.]

[(2) Approval or disapproval of a subsequent approval shall be subject to the standards for initial applications set out in this section.]

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

Filed with the Office of the Secretary of State on May 8, 2019.

TRD-201901373

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SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

23 TAC §535.74

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.74, Approval of Continuing Education Instructors, in Chapter 535, General Provisions. The proposed amendments to §535.74 are made in direct response to the Sunset Advisory Commission Report which directs the elimination of TREC's authority to approve real estate and inspector instructors but retains the ability to maintain qualifications and standards of instructors and TREC approved courses. In the proposed amendments, TREC will rely on approved providers to hire qualified instructors for all continuing education courses based on criteria outlined in the proposed amendments.

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

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be a more streamlined approach, thereby increasing efficiency, eliminating fees for instructors, and allowing the Commission to dedicate limited resources to activities that directly impact consumer protection.

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

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

For each year of the first five years the proposed amendments are in effect the amendments will, however, require a decrease in fees paid to the agency. The Sunset Commission estimated that by eliminating the approval process for real estate and in-

spector instructors, the approximate annual loss to TREC will be \$174,750 from licensing fees. TREC charges \$150 for two-year approvals, renewals, and reinstatements for real estate education instructors. In fiscal year 2017, TREC received 447 initial approval applications, 469 renewal applications, and 232 reinstatement applications for real estate instructors. TREC also charges \$50 for two-year approvals, renewals, and reinstatements for inspector instructors. In fiscal year 2017, TREC received 24 approval applications, 23 renewal applications, and four reinstatement applications from inspector instructors. (See page 30 of the Sunset Advisory Commission Staff Report with Commission Decisions for TREC 2018-2019).

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.74. *Qualifications for [Approval of] Continuing Education Instructors.*

(a) A provider must ensure that an instructor who teaches continuing education courses is competent in the subject matter to be taught and has the ability to teach effectively.

~~[(a) Application for approval.]~~

~~[(1) A person desiring to be approved by the Commission to be an instructor for elective real estate or real estate inspection CE courses shall:]~~

~~[(A) file an application on the appropriate form approved by the Commission; and]~~

~~[(B) pay the fee the required by §535.101 or §535.210 of this title.]~~

~~[(2) The Commission may:]~~

~~[(A) request additional information be provided to the Commission relating to an application; and]~~

~~[(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.]~~

(b) The provider must use an instructor who possess the following additional qualifications [Certification required] to teach real estate non-elective CE courses:[:]

(1) [An applicant may not teach a real estate non-elective CE course until the application has received written certification from the Commission to teach a specific non-elective continuing education course:]

~~[(2)] [To obtain certification to teach a real estate non-elective CE course, the applicant must:]~~

~~[(A)] meet the criteria to teach [be currently approved by the Commission as an instructor for] qualifying courses under §535.63 of this chapter;[subchapter in the subject areas of:]~~

~~[(i) Principles of Real Estate, Law of Agency and Law of Contracts to teach Legal Update I and II; or]~~

~~[(ii) Principles of Real Estate, Law of Agency, Law of Contracts and Real Estate Brokerage to teach Broker Responsibility];~~

~~(2) [(B)] successfully complete an instructor training program authorized [approved] by the Commission for the version of the non-elective CE course to be taught [for which certification is sought]; and~~

~~(3) [(C)] receive a passing grade of at least 80% on the non-elective CE course final examination promulgated by the Commission.~~

~~[(3) A previously certified instructor must be recertified to teach a non-elective CE course whenever the previous course has expired and a new course has been approved.]~~

~~[(4) An instructor's certification to teach a legal update course expires on December 31 of every odd-numbered year.]~~

~~[(5) An instructor's certification to teach the broker responsibility course expires on December 31 of every even-numbered year.]~~

~~(c) For [To be approved as an instructor of] Standards of Practice Review, or Inspector Legal and Ethics, the provider must use [or as an instructor of a ride along inspection course as defined in §535.218 of this title,] an instructor who has [applicant must have] five years of active licensure as a Texas professional inspector, and has [have]:~~

~~(1) performed a minimum of 200 real estate inspections as a Texas professional inspector; or~~

~~(2) three years of experience in teaching and/or sponsoring trainees or inspectors.~~

~~(d) An inspector is qualified to instruct a Ride-Along Course as defined in §535.218 of this title if the inspector has five years of active licensure as a Texas professional inspector, and has:~~

~~(1) performed a minimum of 200 real estate inspections as a Texas professional inspector; or~~

~~(2) three years of experience in teaching and/or sponsoring trainees or inspectors.~~

~~[(d) Approval notice: An applicant shall not act as or represent itself to be an approved real estate inspection instructor until the applicant has received written notice of the approval from the Commission.]~~

~~[(e) Standards for instructor approval for continuing elective education courses: To be approved as an instructor by the Commission to teach real estate or real estate inspection elective CE courses, the applicant must satisfy the Commission as to:]~~

~~[(1) the applicant's honesty, trustworthiness, and integrity; and]~~

~~[(2) the person's competency in the subject matter to be taught and ability to teach effectively.]~~

~~[(f) Approval notice: An applicant shall not act as or represent itself to be an approved elective CE instructor until the applicant has received written notice of the approval from the Commission.]~~

~~[(g) Period of approval: The approval of an elective CE instructor is valid for two years.]~~

~~[(h) Disapproval of an application.]~~

~~[(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission shall disapprove~~

~~the application and provide written notice of the disapproval to the applicant.]~~

~~[(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section shall be in Travis County.]~~

~~[(i) Subsequent approval.]~~

~~[(1) Not earlier than 90 days before the expiration of its current approval, a CE instructor may apply for approval for another two year period.]~~

~~[(2) Approval or disapproval of a subsequent application shall be subject to the standards for initial applications for approval set out in the section.]~~

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

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Chelsea Buchholtz

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3177



22 TAC §535.75

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.75, Responsibilities and Operations of Continuing Education Providers. The proposed amendments to §535.75 are recommended by the Education Standards Advisory Committee. The amendments reflect the changes made to §535.74 based on the Sunset Advisory Commission Report which directs the elimination of TREC's authority to approve real estate and inspector instructors but retains the ability to set qualifications and standards of instructors for TREC approved courses.

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

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be compliance with Sunset Advisory Commission directives.

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

create or eliminate a government program;

require the creation of new employee positions or the elimination of existing employee positions;

require an increase or decrease in future legislative appropriations to the agency;

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit or repeal an existing regulation;

increase or decrease the number of individuals subject to the rule's applicability;

positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.75. Responsibilities and Operations of Continuing Education Providers.

(a) (No change.)

(b) Use of qualified ~~[approved]~~ Instructor. ~~[The use of approved CE instructor is governed by this subsection.]~~

(1) Except as provided by this subsection, a CE provider must use an instructor that:

(A) is currently qualified under §535.74 of this title ~~[approved by the Commission]~~; and

(B) has expertise in the subject area of instruction and ability as an instructor;

(2) A CE instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval form;

(3) A CE provider may use the services of a guest instructor who is not qualified under §535.74 of this title ~~[approved as a CE instructor by the Commission]~~ for real estate or inspector elective CE courses provided that:

(A) the ~~[that]~~ guest instructor instructs for no more than a total of 50% of the course; and

(B) a ~~[commission approved]~~ CE instructor qualified under §535.74 of this title remains in the classroom during the guest instructor's presentation.

(4) A CE provider may use the services of a guest instructor who is not qualified under §535.74 of this title ~~[approved as a CE instructor by the Commission]~~ for 100% of a real estate or inspector elective CE courses provided that:

(A) the CE provider is:

(i) an accredited college or university;

(ii) a professional trade association that is approved by the Commission as a CE provider under §535.71 of this subchapter; or

(iii) an entity exempt under §535.71 of this subchapter; and

(B) the course is supervised and coordinated by a ~~[Commission approved]~~ CE instructor qualified under §535.74 of this title who is responsible for verifying the attendance of all who request CE credit.

(c) (No change.)

(d) Course completion roster. Instead of providing a course completion certificate, upon completion of a course, a CE provider shall submit a class roster to the Commission as outlined by this subsection.

(1) Classroom:

(A) A provider shall maintain a course completion roster and submit information contained in the roster by electronic means acceptable to the Commission not sooner than the number of course credit hours has passed and ~~[a class roster in a format approved by the Commission]~~ not later than the 10th calendar day after the date a course is completed.

(B) A course completion roster shall include:

(i) the provider's name and license;

(ii) a list of all instructors whose services were used in the course;

(iii) the course title;

(iv) the course numbers;

(v) the number of classroom credit hours;

(vi) the course delivery method ~~[date of issuance]~~;

(vii) the dates the student started ~~[registered for, began]~~ and completed the course; and

(viii) the signature of an authorized representative of the provider ~~[who was in attendance and]~~ for whom an authorized signature is on file with the Commission.

(C) The Commission shall not accept ~~[signature stamps or]~~ unsigned course completion rosters.

(2) Distance Education delivery method. A provider shall maintain a Distance Education Reporting form and submit information contained in that form by electronic means acceptable to the Commission, for each student completing the course not sooner ~~[earlier]~~ than the number of course credit hours has passed ~~[for course credit]~~ after the student starts the course and not later than the 10th calendar day after the student completed the course.

(3) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(4) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(e) (No change.)

(f) Changes in Ownership or Operation of an approved CE Provider. Changes in ownership or operation of an approved CE provider are governed by this subsection.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

- (A) ownership;
- (B) management; and
- (C) the location of main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide a CE Provider Application including all required information and the required fee [Principal Information Form for each proposed new owner who would hold at least a 10% interest in the provider to the Commission].

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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Chelsea Buchholtz

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3177



SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.148

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.148, Receiving an Undisclosed Commission or Rebate in Chapter 535, General Provisions. The amendments provide clarity about consumer protection issues when paying or receiving funds to/from other settlement service providers. A section was added to define settlement providers that mostly parallels the definition in the Real Estate Settlement Procedures Act (RESPA) for consistency with the federal law. Exemptions from the prohibition provisions were also clarified. TREC currently has a rule that includes these provisions for inspectors but not explicitly for other real estate license holders. The change provides parity for license types subject to TREC's jurisdiction and ensures settlement provider independence. These amendments prohibit license holders from selling referrals or recommending settlement providers to their clients based solely on money or other valuable consideration received in order to ensure that license holders are upholding their fiduciary duty by putting their clients' interest above their own financial gain.

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

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections is

greater awareness and compliance of license holders on settlement provider payments, settlement provider independence and serving the client's best interest. It will also provide greater parity with all license types subject to the Commission's jurisdiction. All of this provides greater consumer protection.

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

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

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapter 1101 and ensure compliance with Chapter 1101.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101.

No other statute, code or article is affected by the proposed amendments.

§535.148. Receiving an Undisclosed Commission or Rebate.

(a) A license holder may not receive a commission, rebate, or fee in a transaction from a person other than the person the license holder represents without first disclosing to the license holder's client that the license holder intends to receive the commission, rebate or fee, and obtaining the consent of the license holder's client. [This subsection does not apply to referral fees paid by one licensed real estate broker or sales agent to another active licensed broker or sales agent.]

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

(d) A license holder may not pay or receive a fee or other valuable consideration to or from any other settlement service provider for, but not limited to, the following: [A license holder may not accept a fee or payment for services provided for or on behalf of a service provider to a real estate transaction the payment of which is contingent upon a party to the real estate transaction purchasing a contract or services from the service provider].

(1) the referral of inspections, lenders, mortgage brokers, or title companies;

(2) inclusion on a list of inspectors, preferred settlement providers, or similar arrangements; or

(3) inclusion on lists of inspectors or other settlement providers contingent on other financial agreements.

(e) In this section, "settlement service" means a service provided in connection with a prospective or actual settlement, and "settlement service provider" includes, but is not limited to, any one or more of the following:

- (1) a federally related mortgage loan originator;
- (2) a mortgage broker;
- (3) a lender or other person who provides any service related to the origination, processing or funding of a real estate loan;
- (4) a title service provider;
- (5) an attorney;
- (6) a person who prepares documents, including notarization, delivery, and recordation;
- (7) a person who provides credit report services;
- (8) an appraiser;
- (9) an inspector;
- (10) a settlement agent;
- (11) a person who provides mortgage insurance services;
- (12) a person who provides services involving hazard flood, or other casualty insurance, homeowner's warranties or residential service contracts;
- (13) a real estate agent or broker; and
- (14) a person who provides any other services for which a settlement service provider requires a borrower or seller to pay.

(f) [(e)] A license holder must use TREC No. RSC-2, Disclosure of Relationship with Residential Service Company, to disclose to a party to a real estate transaction in which the license holder represents one or both of the parties any payments received for services provided for or on behalf of a residential service company licensed under Texas Occupations Code Chapter 1303.

(g) [(f)] The Texas Real Estate Commission adopts by reference TREC No. RSC-2, Disclosure of Relationship with Residential Service Company, approved by the Commission for use by license holders to disclose payments received from a residential service company. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(h) This section does not prohibit:

- (1) normal promotional or educational activity that is not conditioned on the referral of business and that does not involve the defraying of expenses that otherwise would be incurred;
- (2) a payment at market rates to any person for goods actually furnished or for services actually performed; or
- (3) a payment pursuant to a cooperative brokerage or referral arrangement or agreement between active licensed real estate agents and real estate brokers.

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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Chelsea Buchholtz
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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.206

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.206, The Texas Real Estate Inspector Committee, in Chapter 535, General Provisions. These proposed amendments are recommended by the Texas Real Estate Inspector Committee. The amendments reinstate term limits for Texas Real Estate Inspector Committee members, align term expiration dates with other advisory committees for the Commission, change the meeting month in which officers are elected from February to January to better align with the committee's meeting schedule, and update the Sunset date to match the new Sunset date for the Commission.

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

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be greater efficiency in operations and potentially greater variety in membership of the committee based on limited terms.

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

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

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.206. *The Texas Real Estate Inspector Committee.*

(a) - (c) (No change.)

(d) Inspector members of the Committee serve staggered six-year terms, with the terms of two inspector members expiring on December 31 [~~February 1~~] of each odd-numbered year. Inspector members may not serve more than two consecutive full terms. Public members of the Committee serve staggered two year terms, with the term of one public member expiring on December 31 [~~February 1~~] of each even-numbered year and the terms of two public members expiring on December 31 [~~February 1~~] of each odd-numbered year. Public members may not serve more than three consecutive full terms. Initial appointments may be made for terms shorter than six or two years, respectively, in order to establish staggered terms. A member whose term has expired holds office until the member's successor is appointed. If a vacancy occurs during a member's term, the Commission shall appoint a person to fill the unexpired term.

(e) At a regular meeting in January [~~February~~] of each year, the Committee shall elect from its members a presiding officer, assistant presiding officer, and secretary.

(f) (No change.)

(g) If the executive director [~~administrator~~] of the Commission has knowledge that a potential ground for removal exists, the executive director [~~administrator~~] shall notify the presiding officer of the Commission that the potential ground exists.

(h) - (m) (No change.)

(n) The Committee is automatically abolished on September 1, ~~2025~~ [2019] unless the Commission subsequently establishes a different 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.

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Chelsea Buchholtz

General Counsel

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22 TAC §§535.209, 535.212, 535.213, 535.218

The Texas Real Estate Commission (TREC) proposes amendments to §535.209, Examinations, new §535.212, Education and Experience Requirements for a License, new §535.213, Qualifying Real Estate Inspector Courses, and amendments to §535.218, Continuing Education Required for Renewal, in Chapter 535, General Provisions. These proposed amendments are recommended by the Texas Real Estate Inspector Committee.

The amendments streamline inspector pre-licensing education requirements pursuant to the recent Sunset Advisory Commission's directive to ensure the rules are "meaningful, efficient, and not unnecessarily burdensome."

The proposed amendments to §535.209 allow the two part licensure examination to be taken at two separate times. The proposed amendment also clarifies that for an individual licensed in another state who has already passed the national examination, the coursework and examination portion associated with the national portion are not required for licensure in Texas. The amendment also specifies what courses must be retaken if an applicant thrice fails either the national or state portion of the examination.

The new proposed §535.212 significantly streamlines the pre-licensing requirement for inspectors. Currently, there are three license types for inspectors: apprentice, real estate and professional. The more experienced license types (real estate and professional) can be attained through experience and sponsorship or through substitute coursework. The new proposed §535.212 sets out each path in one place and reduces the total hours of coursework and field work for the substitute paths to be more in line with other states requirements. As an example, overall hours to become a professional inspector using the substitute path have been reduced to 194 from 394. Further, the new rule removes the requirement to repeat coursework for a higher level license.

The new proposed §535.213 details the new required coursework for licensure. The courses closely track the national guidelines for the national examination and create improved Texas modules and a practicum for the field work component of training. These redesigned courses should improve the quality and consistency of inspector licensure coursework.

The proposed amendments to §535.218 sets out the continuing education topics required for inspectors to renew their licenses that are currently cross referenced to §535.213, which is proposed for repeal. The proposed amendments also add the minimum requirements for receiving continuing education credit for a ride-along inspection course, which were contained in current §535.213 rule, which is proposed for repeal. Lastly, the proposed amendment expands the ability for an inspector to receive four hours per license period of continuing education by attending any Texas Real Estate Inspector Committee meeting.

Chelsea Buchholtz, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. Specifically, while the reduction in required hours may affect education provider businesses, a recent change in rule to reduce some class sizes could offset any need to reduce costs. In addition, the lower overall hour requirement could attract more students to take inspector licensure courses. So overall, no adverse economic effect is anticipated.

There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of the changes is a simplified licensing

process without redundancies that existed previously for license holders and seekers.

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

create or eliminate a government program;

require the creation of new employee positions or the elimination of existing employee positions;

require an increase or decrease in future legislative appropriations to the agency;

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit or repeal an existing regulation;

increase or decrease the number of individuals subject to the rule's applicability; or

positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.209. *Examinations.*

(a) (No change.)

(b) Administration of examination. Except as otherwise required by Chapter 1102 or this section, examinations shall be conducted as provided by §535.57 of this title (relating to Examinations). An applicant is ~~not~~ eligible to take a qualifying examination for a license after ~~until~~ the Commission has received evidence of ~~completion of all education and~~ experience required by this subchapter and completion of education as required by subsection (c) of this section. If an applicant chooses to take the national portion and state portion of the exam separately, the national portion must be taken before the state portion of the exam.

(c) Exam Eligibility.

(1) Before an applicant is eligible to take the national portion of the examination, the applicant must submit evidence of completion of the following coursework to the Commission:

(A) Building Science Module I;

(B) Building Science Module II;

(C) Business Operations and Professional Responsibilities Module; and

(D) Analysis of Findings and Reporting Module, if required for licensure under §535.212 of this title.

(2) Before an applicant is eligible to take the state portion of the examination, and if required for licensure under §535.212 of

this title, the applicant must submit evidence of completion of the following coursework to the Commission:

(A) Texas Law Module;

(B) Texas Standards of Practice Module;

(C) Texas Standards of Practice Interactive Module;

and

(D) Texas Practicum.

(d) ~~(e)~~ Waiver of national portion of examination requirement.

(1) The Commission may waive the national portion of the examination of an applicant for a real estate or professional inspector license if the applicant:

(A) ~~(4)~~ currently holds an active real estate inspector license in another state or actively practices as a home inspector in compliance with the laws of another state; and

(B) ~~(2)~~ has passed the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors.

(2) To become licensed, an applicant who has had the national portion of the examination waived as provided by this section:

(A) must submit evidence of completion of the required coursework as provided under subsection (c)(2) of this section and pass the Texas portion of the examination; and

(B) is not required to complete coursework outlined under subsection (c)(1) of this section.

(e) ~~(4)~~ If the applicant has not satisfied all requirements within one year from the time the commission accepted an application for filing, including passing both parts of the examination, the application is terminated and a new application is required.

(f) ~~(e)~~ Examination results are valid for a period of one year from the date the examination is passed. An examination is considered passed when an applicant has received a passing grade on both parts of the examination.

(g) ~~(4)~~ An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence [satisfactory] to the Commission [commission] that the applicant has successfully completed additional qualifying [core] education after the date of the third failed examination, as follows[; after the date the applicant failed the examination for the third time]:

(1) for an applicant who failed the national part of the examination, Building Science Module I or Building Science Module II [32] hours; or

(2) for an applicant who failed the state part of the examination, Texas Law Module, Texas Standards of Practice Module, or Texas Standards of Practice Interactive Module. [8 hours; and]

~~(3) for an applicant who failed both parts of the examination, 40 hours.]~~

§535.212. *Education and Experience Requirements for a License.*

(a) Sponsored Experience and Education Requirements for a Real Estate Inspector License. To become licensed as a real estate inspector a person must:

(1) satisfy the 90-hour education requirement for licensure by completing the following coursework:

- (A) Building Science Module I, total 40 hours;
- (B) Building Science Module II, total 40 hours; and
- (C) Business Operations and Professional Responsibilities Module, total 10 hours;

(2) have been licensed as an apprentice inspector on active status for a total of at least three months within the 12 month period before the filing of the application;

(3) complete 25 inspections; and

(4) pass the licensure examinations set out in §535.209 of this title (relating to Examinations).

(b) Sponsored Experience and Education Requirements for a Professional Inspector License. To become licensed as a professional inspector, a person must:

(1) satisfy the 134-hour education requirement for licensure by completing the following coursework:

(A) Building Science Module I, total 40 hours;

(B) Building Science Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Texas Law Module, total 20 hours; and

(E) Texas Standards of Practice Module, total 24 hours;

(2) have been licensed as a real estate inspector on active status for a total of at least 12 months within the 24 month period before the filing of the application;

(3) complete 175 inspections; and

(4) pass the licensure examinations set out in §535.209 of this title.

(c) Sponsored Experience Criteria. To meet the experience requirements for licensure under subsections (a) or (b) of this section, or to sponsor apprentice inspectors or real estate inspectors, the Commission considers an improvement to real property to be any unit capable of being separately rented, leased or sold, subject to the following restrictions:

(1) An inspection of an improvement to real property that includes the structural and equipment/systems of the unit constitutes a single inspection.

(2) The Commission may not give experience credit to the same applicant or professional inspector for more than three inspections per day. No more than three applicants may receive credit for the inspection of the same unit within a 30-day period, and no more than three apprentice inspectors may receive credit for an inspection of the same unit on the same day.

(d) Substitute Experience and Education Requirements for a Real Estate Inspector License. As an alternative to §535.212(a), to become a licensed real estate inspector, a person must:

(1) be sponsored by a professional inspector;

(2) complete a total of 154 hours of qualifying inspection coursework, which must include the following:

(A) Building Science Module I, total 40 hours;

(B) Building Science Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Texas Standards of Practice Interactive Module, total 24 hours; and

(E) Texas Practicum, total 40 hours; and

(3) pass the licensure examinations set out in §535.209 of this title.

(e) Substitute Experience and Education Requirements for a Professional Inspector License. As an alternative to §535.212(b), to become a licensed professional inspector, a person must:

(1) complete a total of 194 hours of qualifying inspection coursework, which must include the following:

(A) Building Science Module I, total 40 hours;

(B) Building Science Module II, total 40 hours;

(C) Business Operations and Professional Responsibilities Module, total 10 hours;

(D) Analysis of Findings and Reporting Module, total 20 hours;

(E) Texas Law Module, total 20 hours;

(F) Texas Standards of Practice Interactive Module, total 24 hours; and

(G) Texas Practicum, total 40 hours; and

(2) pass the licensure examinations set out in §535.209 of this title.

(f) Courses completed for a real estate inspector license shall count towards the identical qualifying inspection coursework for licensure as a professional inspector if the course was completed within five years of filing an application for a professional inspector license.

§535.213. Qualifying Real Estate Inspector Courses.

(a) Approval of Qualifying Real Estate Inspection Courses. Qualifying real estate inspector courses are approved and regulated as required by §535.62 of this title (relating to Approval of Qualifying Courses).

(b) Approved Qualifying Courses of Study. The subjects approved for credit for qualifying inspector courses consist of the following modules:

(1) Building Science Module I (40 hours), which shall contain the following topics, the units of which are outlined in the BSM 1-0, Qualifying Real Estate Inspector Course Approval Form, Building Science Module I:

(A) Site conditions; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(B) Exterior components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(C) Roof components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(D) Structural components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(E) Interior components; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(F) Permanently installed kitchen appliances; assessing for proper condition and operations - 300 minutes; and

(G) Fireplaces, fuel-burning appliances, and their chimney and vent systems; assessing defects and issues that may affect people or the performance of the building - 200 minutes.

(2) Building Science Module II (40 hours), which shall contain the following topics, the units of which are outlined in the BSM 1-0, Qualifying Real Estate Inspector Course Approval Form, Building Science Module II:

(A) Electrical systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(B) Cooling Systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(C) Heating systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(D) Insulation, moisture management systems, and ventilation systems in conditioned and unconditioned spaces; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(E) Plumbing systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes;

(F) Mechanical exhaust systems; assessing defects and issues that may affect people or the performance of the building - 300 minutes; and

(G) Optional Systems - 200 minutes.

(3) Analysis of Findings and Reporting Module (20 hours), which shall contain the following topics, the units of which are outlined in the BSM 1-0, Qualifying Real Estate Inspector Course Approval Form, Analysis of Findings and Reporting Module:

(A) Informing the client what was inspected and describing building systems and components by their distinguishing characteristics - 200 minutes;

(B) Describing inspection methods and limitations in the inspection report to inform the client what was not inspected and why - 200 minutes;

(C) Describing systems and components inspected that are not functioning properly or are defective - 200 minutes;

(D) Describing systems and components in need of further evaluation or action - 200 minutes; and

(E) Describing the implication of defects so that the client understands what could occur if the defects are not corrected - 200 minutes.

(4) Business Operations and Professional Responsibilities Module (10 hours), which shall contain the following topics, the units of which are outlined in the BSM 1-0, Qualifying Real Estate Inspector Course Approval Form, Business Operations and Professional Responsibilities Module:

(A) Elements of the written inspection contract and the rights and responsibilities of the inspector and the client - 250 minutes; and

(B) Inspector's responsibility to maintain the quality, integrity, and objectivity of the inspection process - 250 minutes.

(5) Texas Law Module (20 hours), which shall contain the following topics, the units of which are outlined in the BSM 1-0, Qualifying Real Estate Inspector Course Approval Form, Texas Law Module, hereby adopted by reference:

(A) Licensing Law; Chapter 1102 Texas Occupations Code - 200 minutes;

(B) General Provisions; TREC Rules, Chapter 535 Subchapter R - 400 minutes; and

(C) Inspector Legal & Ethics - 400 minutes.

(6) Texas Standards of Practice Module (24 hours), which shall contain the following topics, the units of which are outlined in the BSM 1-0, Qualifying Real Estate Inspector Course Approval Form:

(A) Structural systems; Texas SOP exclusions and unique reporting requirements - 400 minutes;

(B) Electrical systems; Texas SOP exclusions and unique reporting requirements - 400 minutes; and

(C) Mechanical systems; Texas SOP exclusions and unique reporting requirements - 400 minutes.

(7) Texas Standards of Practice Interactive Module (24 hours), which shall contain the following topics, the units of which are outlined in the BSM 1-0, Qualifying Real Estate Inspector Course Approval Form, Texas Standards of Practice Interactive Module:

(A) Structural systems; Texas SOP exclusions and unique reporting requirements - 400 minutes, to include 200 minutes of hands-on training;

(B) Electrical systems; Texas SOP exclusions and unique reporting requirements - 400 minutes to include 200 minutes of hands-on training; and

(C) Mechanical systems; Texas SOP exclusions and unique reporting requirements - 400 minutes to include 200 minutes of hands-on training.

(8) Texas Practicum (40 hours); which shall consist of:

(A) a minimum of five complete inspections to be evaluated at a level considered satisfactory for release to an average consumer and that demonstrate an understanding of:

(i) report writing;

(ii) client interaction;

(iii) personal property protection; and

(iv) concepts critical for the positive outcome of the inspection process; and

(B) no more than four students per instructor.

§535.218. Continuing Education Required for Renewal.

(a) Continuing education required for renewal.

(1) Before renewal of an inspector license, a license holder must take the 32 hours of continuing education which shall include the following:

(A) 24 hours in the following [of qualifying course] subjects: [as described in §535.213(e) (1) - (8), (11) and (12) of this title, with a maximum of 16 hours on any one single subject; and]

(i) Foundations;

(ii) Framing;

(iii) Building Enclosures;

(iv) Roof Systems;

(v) Plumbing Systems;

(vi) HVAC Systems;

(vii) Texas Standard Report Form Writing; and

(viii) Other approved courses as they relate to real estate inspections, which shall include one or more of the following topics:

- (I) Environmental Protection Agency;
- (II) Consumer Product Safety Commission; and
- (III) general business practices; and

(B) eight hours of non-elective coursework in legal, ethics, SOPs, and report writing consisting of the following coursework:

- (i) 4 hours of Standards of Practice Review; and
- (ii) 4 hours of Legal and Ethics.

(2) An inspector who files an application for reinstatement of an expired license within two years of the expiration date of the previous license[,] must provide evidence satisfactory to the Commission that the applicant has completed any continuing education that would have been otherwise required for timely renewal of the previous license had that license not expired.

(3) An inspector is not eligible to receive more than 16 hours continuing education credit for any one single subject described in subsection (a)(1) of this section.

(b) Receiving continuing education credit for ride-along inspection course.

(1) Up to eight hours of continuing education credit per two year license period may be given to a license holder for completion of a ride-along inspection course [as defined in subsection 535.213(e) of this title].

(2) At a minimum, a ride-along inspection course must:

(A) consist of one full residential property inspection;
and

(B) review applicable standards of practice and departure provisions contained in §§535.227 - 535.233 of this title.

(3) In order to qualify for real estate inspector continuing education credit, a ride-along inspection course shall consist of no more than two students per session.

(4) The instructor of a ride-along inspection course may:

(A) review report writing; and

(B) deliver a notice regarding the ride-along session on a form approved by the Commission to the prospective buyer or seller of the home being inspected.

(c) - (f) (No change.)

(g) Continuing education credit for attendance at a meeting of the Texas Real Estate Inspector Committee. An inspector licensed in Texas may receive up to four hours of continuing education elective credit per license period for attendance in person at any [the February] meeting of the full Texas Real Estate Inspector Committee, provided that the inspector attend the entire meeting. Partial credit will not be awarded.

(h) (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 May 8, 2019.

TRD-201901378

Chelsea Buchholtz
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 23, 2019
For further information, please call: (512) 936-3177



22 TAC §535.212. §535.213

The Texas Real Estate Commission (TREC) proposes the repeal of §535.212, Education and Experience Requirements for a License, and §535.213, Qualifying Real Estate Inspector Instructors and Courses, in Chapter 535, General Provisions. These proposed repeals are recommended by the Texas Real Estate Inspector Committee. The Committee is recommending new §535.212 and §535.213 to streamline inspector pre-licensing education requirements pursuant to the recent Sunset Advisory Commission recommendations to ensure the rules are "meaningful, efficient, and not unnecessarily burdensome." The repeals were necessary due to the significant changes proposed.

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

Ms. Buchholtz also has determined that for each year of the first five years the repeals as proposed are in effect, the public benefit anticipated as a result of enforcing the repeals will be ease of determining the education and experience required to become a qualified real estate inspector.

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

create or eliminate a government program;

require the creation of new employee positions or the elimination of existing employee positions;

require an increase or decrease in future legislative appropriations to the agency;

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit or repeal an existing regulation;

increase or decrease the number of individuals subject to the rule's applicability;

positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeals are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters

1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.212. *Education and Experience Requirements for a License.*

§535.213. *Qualifying Real Estate Inspector Instructors and Courses.*

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 May 8, 2019.

TRD-201901379

Chelsea Buchholtz

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: June 23, 2019

For further information, please call: (512) 936-3177



22 TAC §535.220

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.220, Professional Conduct and Ethics, in Chapter 535, General Provisions. These proposed amendments are recommended by the Texas Real Estate Inspector Committee. The amendments add additional settlement providers to the list of those prohibited from paying or receiving valuable consideration to an inspector in connection with a real estate transaction. The additions update the rule to parallel the revision made to 22 TAC §535.148 dealing with preserving settlement provider independence in real estate transactions.

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

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections is settlement provider independence for greater consumer protection.

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

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

--increase or decrease the number of individuals subject to the rule's applicability;

--positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.220. *Professional Conduct and Ethics.*

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

(e) An inspector shall comply with the following requirements.

(1) An inspector shall not inspect a property when any compensation or future referrals depend on reported findings or on the closing or settlement of a property.

(2) In this section, "settlement service" means a service provided in connection with a prospective or actual settlement, and "settlement service provider" includes, but is not limited to, any one or more of the following:

- (A) federally related mortgage loan originator;
- (B) mortgage broker;
- (C) a lender or other person who provides any service related to the origination, processing or funding of a real estate loan;
- (D) [~~(C)~~] a title service provider;
- (E) [~~(D)~~] an attorney;
- (F) [~~(E)~~] a person who prepares documents, including notarization, delivery, and recordation;
- (G) a person who provides credit report services;
- (H) [~~(F)~~] an appraiser;
- (I) [~~(G)~~] an inspector;
- (J) [~~(H)~~] a settlement agent;
- (K) [~~(I)~~] a person who provides mortgage insurance services;

(L) [~~(J)~~] a person who provides services involving hazard, flood, or other casualty insurance, [or] homeowner's warranties, or residential service contract;

(M) [~~(K)~~] a real estate agent or broker; and

(N) [~~(L)~~] a person who provides any other services for which a settlement service provider requires a borrower or seller to pay.

(3) An inspector shall not pay or receive a fee or other valuable consideration to or from any other settlement service provider for, but not limited to, the following:

(A) the referral of inspections;

(B) inclusion on a list of inspectors, preferred providers, or similar arrangements; or

(C) inclusion on lists of inspectors contingent on other financial agreements.

(4) An inspector shall not receive a fee or other valuable consideration, directly or indirectly, for referring services that are not settlement services or other products to the inspector's client without the client's consent.

(5) This section does not prohibit an inspector from paying or receiving a fee or other valuable consideration, such as to or from a contractor, for services actually rendered.

(6) An inspector shall not accept employment to repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice under this subchapter on which the inspector has performed an inspection under a real estate contract, lease, or exchange of real property within 12 months of the date of the inspection.

(7) Inspectors shall not disclose inspection results or client information without prior approval from the client. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards when feasible.

(8) This subsection does not prohibit ~~[an inspector from]:~~

~~(A) normal promotional or educational activity that is not conditioned on the referral of business and that does not involve the defraying of expenses that otherwise would be incurred; or~~

~~{(A) engaging in legal promotional or educational activities to or with settlement service providers that are not conditioned on the referral of business; or}~~

~~(B) a payment at market rates to any person for goods actually furnished or for services actually performed.~~

~~{(B) purchasing advertising and promoting the inspector at market rates from any person in any publication, event or media.}~~

(f) - (g) (No change.)

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

Filed with the Office of the Secretary of State on May 8, 2019.

TRD-201901375

Chelsea Buchholtz

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: June 23, 2019

For further information, please call: (512) 936-3177



22 TAC §535.222

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.222, Inspection Reports, in Chapter 535, General Provisions. These proposed amendments are recommended by the Texas Real Estate Inspector Committee. The amendments clarify that the inspector does not have to deliver the report until after receipt of payment for the report and reduces the delivery time after payment from three days to two.

Chelsea Buchholtz, General Counsel, has determined that for the first five-year period the proposed amendments are in ef-

fect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Buchholtz also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections is greater clarity in the rules for inspectors and consumers of real estate inspections.

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

create or eliminate a government program;

require the creation of new employee positions or the elimination of existing employee positions;

require an increase or decrease in future legislative appropriations to the agency;

require an increase or decrease in fees paid to the agency;

create a new regulation;

expand, limit or repeal an existing regulation;

increase or decrease the number of individuals subject to the rule's applicability;

positively or adversely affect the state's economy.

Comments on the proposal may be submitted to Chelsea Buchholtz, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102. The statute affected by this proposal is Chapter 1102, Texas Occupations Code.

No other statute, code or article is affected by the proposed amendments.

§535.222. *Inspection Reports.*

(a) For each inspection, the inspector shall:

(1) prepare a written inspection report noting observed deficiencies and other items required to be reported; and

(2) deliver the report to the client ~~[person for whom the inspection was performed]~~ within two ~~[three]~~ days of receipt of payment for the inspection, unless otherwise agreed in writing by the client.

(b) (No change.)

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

Filed with the Office of the Secretary of State on May 8, 2019.

TRD-201901375

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER DD. OIL FIELD CLEANUP REGULATORY FEE

34 TAC §3.732

The Comptroller of Public Accounts proposes amendments to §3.732, concerning reporting requirements for the oil-field cleanup regulatory fee on natural gas. The amendments incorporate statutory changes made by House Bill 3309, 83rd Legislature, 2013. The comptroller proposes renaming this section to include the name of the fee; the proposed new title is "Oil-Field Cleanup Regulatory Fee on Natural Gas."

The comptroller makes minor grammatical and wording changes throughout the section to improve readability. Throughout this section, references to the "Railroad Commission of Texas," which is the official title of that office, replace existing references to the "Texas Railroad Commission."

The comptroller amends subsection (a) to identify the entities who must pay the fee. The comptroller also removes the reference to the rate of the fee prior to September 1, 1991, as this information is no longer necessary due to the passage of time.

The comptroller amends subsection (b) to include the title of Tax Code, Chapter 201 (Gas Production Tax), and to replace the term "occupation tax" with the term "severance tax." See Tax Code, Title 2, Subtitle I (Severance Taxes).

The comptroller amends the title of subsection (c) to better identify the subject of the subsection.

The comptroller amends subsection (c)(1) to remove the reference to the rate of the fee prior to September 1, 1991, as this information is no longer necessary due to the passage of time.

The comptroller amends subsection (c)(2) and (3) to incorporate the changes made by House Bill 3309, which increased the thresholds at which the comptroller will suspend or resume collection of the oil-field cleanup regulatory fee. Previously, the comptroller ceased collecting the fee when the Railroad Commission of Texas certified that the oil and gas regulation and cleanup fund balance exceeded \$20 million. House Bill 3309 increased that threshold from \$20 million to \$30 million. In addition, House Bill 3309 increased the threshold at which the comptroller resumes collecting the fee. Previously, the comptroller resumed collecting the fee when the Railroad Commission of Texas certified that the fund balance fell below \$10 million. House Bill 3309 increased that amount from \$10 million to \$25 million.

The comptroller amends subsections (c)(2) and (3) to more closely follow the language of Natural Resources Code, §81.067

(Oil and Gas Regulation and Cleanup Fund), and to use the entire name of the oil and gas regulation and cleanup fund.

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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amended rule would benefit the public by updating the rule with the most current statutory changes and improving readability. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendments would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no significant anticipated economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

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*.

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges that the comptroller administers under other law.

The amendment implements Natural Resources Code, §81.067 (Oil and Gas Regulation and Cleanup Fund) and §81.117 (Oil-Field Cleanup Regulatory Fee on Gas).

§3.732. Oil-Field Cleanup Regulatory Fee on Natural Gas [Reporting Requirements for the Gas Fee].

(a) Imposition. ~~The oil-field~~ [Except as provided by subsection (c)(2) of this section, the oil field] cleanup regulatory fee on natural gas is imposed upon the first purchaser or producer of natural gas who is liable for severance tax under Tax Code, §201.204 (First Purchaser to Pay Tax) or §201.2041 (Producer to Pay Tax on Certain Gas) [due for the production month of September 1991 and all subsequent months].

(b) Reports. The fee is [to be] reported and paid on the natural gas report in the same manner as the severance tax [occupation tax is] imposed under [by] Tax Code, Chapter 201 (Gas Production Tax).

(c) Amount of fee; suspension and reinstatement of fee upon certifications by the Railroad Commission of Texas.

(1) ~~The~~ [Except as provided in paragraph (2) of this subsection; the] rate of the fee for natural gas produced is [prior to September 1, 2001, shall be one-thirtieth of \$.01 (\$.000333) per 1,000 cubic feet (MCF) of gas and the rate of the fee for gas produced September 1, 2001, and later shall be] one-fifteenth of \$.01 (\$.000667) per 1,000 cubic feet (MCF) of natural gas.

(2) The fee is [shall] not due beginning [be collected, or required to be paid for the production month that begins] on the first day

of the second month following certification to the comptroller by the Railroad Commission of Texas [the Texas Railroad Commission's certification to the comptroller] that the oil and gas regulation and cleanup fund balance equals or exceeds \$30 [\$20] million, except as provided in paragraph (3) of this subsection. The comptroller shall publish notification of the certification in the *Texas Register* [that the fee shall no longer be collected] 15 days prior to the beginning of the production month for which the fee is not due [shall no longer be collected].

(3) The [If the Texas Railroad Commission certifies to the comptroller that the balance of the fund has fallen below \$10 million, the] fee shall again be due beginning the first day of the second month following certification to the comptroller by the Railroad Commission of Texas that the oil and gas regulation and cleanup fund balance has fallen below \$25 million [the commission's certification to the comptroller]. The comptroller shall publish notification of the certification in the *Texas Register* [that the fee shall be required to be collected] 15 days prior to the beginning of the production month for which the fee is due [shall be collected].

(d) Volume subject to fee. The fee is due [will be collected] on all natural gas produced and saved, except an interest owned by a governmental entity as defined in §3.27 of this title (relating to Exemption of Certain Interest Owners from Gas Occupation Taxes).

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 May 10, 2019.

TRD-201901391

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: June 23, 2019

For further information, please call: (512) 475-2220



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 429. FIRE INSPECTOR AND PLAN EXAMINER

SUBCHAPTER B. MINIMUM STANDARDS FOR PLAN EXAMINER

37 TAC §429.201

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 429, Fire Inspector and Plan Examiner, Subchapter B, Minimum Standards For Plan Examiner, §429.201, Minimum Standards for Plan Examiner Personnel.

The purpose of the proposed amendments is to add language that would provide a temporary "grandfathering" provision for Plan Examiner I, allowing additional individuals meeting one of the listed requirements to also qualify for the certification.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT:

Tim Rutland, Executive Director, has determined that for each year of the first five-year period the proposed amendments are

in effect, there will be no significant fiscal impact to state government or local governments.

PUBLIC BENEFIT:

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, public benefit from the passage could be derived from the amendments as more qualified individuals would be able to obtain the certification and perform plan reviews for their jurisdiction.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES:

There will be no effect on small businesses, micro businesses, or rural communities as described in Texas Government Code, Chapter 2006, and therefore an economic impact analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT:

The agency has determined that during the first five years the amended rules are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not require the creation or elimination of employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules may result in a small increase in fees paid to the agency as individuals not previously qualified choose to gain the certification;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand or repeal existing regulations;
- (7) the rules may expand the number of individuals subject to the rules applicability only to the extent that additional individuals choose to gain the certification; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT:

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

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS:

Texas Government Code §2001.0045 does not apply to the proposed rules because §2001.0045(c)(6) exempts the agency because agency rules are necessary to protect the health, safety and welfare of the residents of this state.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or emailed to deborah.cowan@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties, and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§429.201. *Minimum Standards for Plan Examiner Personnel.*

(a) Plan examiner duties are defined as the review of building or other structure plans for the purpose of determining compliance with adopted fire codes and standards.

(b) Special temporary provision. Individuals are eligible to apply for Plan Examiner certification if they hold an active Fire Inspector certification and any of the following criteria is met:

(1) the individual passed the Plan Examiner section of a Fire Inspector exam at any time; or

(2) the individual is or has been assigned to plan review duties with a local jurisdiction. Verification of plan review duties must be in the form of a letter from the head of the plan review program for the jurisdiction; or

(3) the individual is or has served as an instructor for a Fire Inspector training program approved by the commission for Fire Inspector certification. Verification of instructor duties must be in the form of a letter from the chief training officer of the program.

(4) This subsection will expire on September 1, 2020.

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 May 10, 2019.

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Tim Rutland

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3812



CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.19

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 439, Examinations for Certification, Subchapter A, Examinations for On-Site Delivery Training, concerning §439.19, Number of Test Questions.

The purpose of the proposed amendments is to establish more consistent guidelines regarding the maximum number of pilot questions that may be included on a certification examination.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tim Rutland, Executive Director, has determined that for each year of the first five-year period the proposed amendments are

in effect, there will be no significant fiscal impact to state government or local governments.

PUBLIC BENEFIT

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, public benefit from the passage would provide less confusion on the part of examinees regarding the content of state certification examinations.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

There will be no effect on persons required to comply with the amendments as proposed. There will be no impact on micro or small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an economic impact analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined that during the first five years the amended rules are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not require the creation or elimination of employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the rules will not increase or decrease fees paid to the agency;
- (5) the rules will not create a new regulation;
- (6) the rules will not expand or repeal an existing regulation;
- (7) the rules will not change the number of individuals subject to the rules; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Texas Government Code Section 2001.0045 does not apply to the proposed rules because §2001.0045(c)(6) exempts the agency because agency rules are necessary to protect the health, safety and welfare of the residents of this state.

PUBLIC COMMENTS

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to deborah.cowan@tcp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties, and §419.032, which provides the commission the authority to propose rules regarding qualifications and competencies for fire protection personnel.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008 and §419.032.

§439.19. *Number of Test Questions.*

(a) Each examination may have two types of questions: pilot and active. Pilot questions are new questions placed on the examination for statistical purposes only. These questions do not count against an examinee if answered incorrectly. The maximum possible number of pilot questions will be 10% of the number of exam questions, rounded up.

(b) The number of questions on an examination, sectional examination, or retest will be based upon the specific examination, or number of recommended hours for a particular curriculum or section as shown in the table below. Any pilot questions added to an examination, sectional examination, or retest will be in addition to the number of exam questions.

Figure: 37 TAC §439.19(b)

[Figure: 37 TAC §439.19(b)]

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

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For further information, please call: (512) 936-3812



CHAPTER 459. FIRE AND LIFE SAFETY EDUCATOR

The Texas Commission on Fire Protection (commission) proposes amendments to Chapter 459, Fire and Life Safety Educator, Subchapter A, Minimum Standards for Fire and Life Safety Educator I concerning §459.1, Fire and Life Safety Educator I Certification, and new §459.7, International Fire Service Accreditation Congress (IFSAC) Seal; and Subchapter B, Minimum Standards for Fire and Life Safety Educator II, concerning new §459.207, International Fire Service Accreditation Congress (IFSAC) Seal.

The purpose of the amendments is to remove obsolete language regarding a temporary provision that has expired, and to add language allowing individuals to gain IFSAC credentials for Fire and Life Safety Educator I and II.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tim Rutland, Executive Director, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments.

PUBLIC BENEFIT

Mr. Rutland has also determined that for each year of the first five years the amendments are in effect, the public benefit from the passage of the proposal will be the availability of additional credentials for individuals meeting the qualifications.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES AND RURAL COMMUNITIES

There will be no effect on persons required to comply with the amendments as proposed. There will be no impact on micro or small businesses or rural communities, as described in Texas Government Code, Chapter 2006, and therefore an economic impact analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The agency has determined that during the first five years the amendments are in effect:

- (1) the rules will not create or eliminate a government program;
- (2) the rules will not create or eliminate any existing employee positions;
- (3) the rules will not require an increase or decrease in future legislative appropriations;
- (4) the rules may result in a slight increase in fees paid to the agency as individuals choose to obtain IFSAC seals in the applicable disciplines;
- (5) the rules will not create a new regulation, as IFSAC seals are purely voluntary;
- (6) the rules will not expand, limit or repeal an existing regulation;
- (7) the rules will not increase the number of individuals subject to the rule; and
- (8) the rules are not anticipated to have an adverse impact on the state's economy but may have a minimal positive impact.

TAKINGS IMPACT ASSESSMENT

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

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Texas Government Code Section 2001.0045 does not apply to the proposed rule because §2001.0045(c)(6) exempts the agency because agency rules are necessary to protect the health, safety and welfare of the residents of this state.

PUBLIC COMMENT

Comments regarding the proposed new rule may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE AND LIFE SAFETY EDUCATOR I

37 TAC §459.1, §459.7

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which allows the commission to appoint fire protection personnel.

The proposal implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§459.1. Fire and Life Safety Educator I Certification.

(a) A Fire and Life Safety Educator I is defined as an individual who performs professional work in the coordination and delivery of public fire and life safety education, and fire prevention programs.

(b) All individuals holding a Fire and Life Safety Educator I certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(c) A regulated entity that employs an individual certified as Fire and Life Safety Educator I must report the individual's employment via the commission's online data management system (FIDO system).

[(d) Special temporary provision. Individuals are eligible to take the commission examination for Fire and Life Safety Educator I certification by:]

[(1) providing documentation acceptable to the commission that the individual has successfully completed Fire and Life Safety Educator I certification training that meets the minimum requirements of National Fire Protection Association Standard 1035; or]

[(2) providing documentation acceptable to the commission of proficiency in fire and life safety education as an employee of a government entity; a member in a volunteer fire service organization; or an employee of a regulated non-governmental fire department; or]

[(3) holding certification as a Fire Instructor I or higher.]

[(4) This subsection will expire on February 28, 2019.]

§459.7. International Fire Service Accreditation Congress (IFSAC) Seal.

Individuals completing a commission-approved Fire and Life Safety Educator I program may be granted an IFSAC seal for Fire and Life Safety Educator I by making application to the commission for the IFSAC seal and paying applicable fees. Individuals must submit the fee for the seal prior to the expiration of the examination to qualify for the IFSAC seal.

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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Tim Rutland

Executive Director

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For further information, please call: (512) 936-3812



SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE AND LIFE SAFETY EDUCATOR II

37 TAC §459.207

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which allows the commission to appoint fire protection personnel.

The proposal implements Texas Government Code, Chapter 419, §419.008 and §419.032.

§459.207. International Fire Service Accreditation Congress (IFSAC) Seal.

Individuals completing a commission approved Fire and Life Safety Educator II program may be granted an IFSAC seal for Fire and Life Safety Educator II by making application to the commission for the IFSAC seal and paying applicable fees. Individuals must submit the fee for the seal prior to the expiration of the examination to qualify for the IFSAC seal.

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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Executive Director

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PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES SUBCHAPTER A. ACCREDITATION

37 TAC §651.5, §651.7

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code §651.5 and §651.7 to remove the forensic discipline "document examination" from the list of forensic disciplines subject to Commission accreditation. The amendments are necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The amendments are made in accordance with the Commission's accreditation authority under Tex. Code. Crim. Proc. art. 38.01§4-d(c).

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal. The amendments remove a forensic discipline from oversight by the Commission thus reducing the number of laboratories and/or individuals subject to accreditation and licensing requirements in Texas.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be proper notification of the forensic disciplines subject to the Commission's accreditation and licensing programs.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendments will not have an adverse economic effect on any small or micro businesses because there are no anticipated economic costs to any person or laboratory who is required to comply with the rule as proposed. The amendments remove a forensic discipline from oversight by the Commission thus reducing the number of laboratories and/or individuals subject to accreditation and licensing requirements in Texas.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The proposed amendments exempt a forensic discipline from forensic oversight and in turn reduce the Commission's oversight authority related to this discipline. The proposed amendments do not create a new regulation. The proposed amendments limit existing Commission regulations as they pertain to this particular forensic discipline. The proposed amendments decreases the number of laboratories subject to the rule's applicability. The proposed amendments positively affect the state's economy because they propose a reduction in regulation.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 24, 2019, to be considered by the Commission.

Statutory Authority. The amendments are proposed under Tex. Code Crim. Proc. art 38.01 §4-d(c).

Cross reference to statute. The proposal affects 37 Texas Administrative Code §651.5 and §651.7.

§651.5. Forensic Disciplines Subject to Commission Accreditation.

(a) Forensic analysis/recognized accreditation. This section describes a forensic discipline or category of analysis that involves forensic analysis for use in a criminal proceeding and for which accreditation is available from a recognized accrediting body.

(b) By discipline. A crime laboratory may apply for Commission accreditation for one or more of the following disciplines:

(1) Seized Drugs. Categories of analysis may include one or more of the following: qualitative determination, quantitative measurement, weight measurement, and volume measurement;

(2) Toxicology. Categories of analysis may include one or more of the following: qualitative determination and quantitative measurement;

(3) Forensic Biology. Categories of analysis may include one or more of the following: collection, DNA-STR, DNA-YSTR, DNA-Mitochondrial, DNA-SNP, body fluid identification, relationship testing, microbiology, individual characteristic database, and nucleic acids other than human DNA;

(4) Firearms/Toolmarks. Categories of analysis may include one or more of the following: physical comparison, determination of functionality, length measurement, trigger pull force measurement, qualitative chemical determination, distance determination, ejection pattern determination, product (make/model) determination, evaluation of firearm-related evidence for NIBIN suitability, performance of NIBIN entries, and individual characteristic database;

~~(5) Document Examination. Categories of analysis may include one or more of the following: document authentication, physical comparison, and product determination;~~

~~5 [(6)] Materials (Trace). Categories of analysis may include one or more of the following: physical determination, chemical determination, physical/chemical comparison, product (make/model) determination, gunshot residue analysis, footwear and tire tread analysis, and fire debris and explosives analysis (qualitative determination);~~
or

~~6 [(7)] Other discipline and its related categories of analysis if accredited by a recognized accrediting body and approved by the Commission.~~

(c) Cross-disciplines and categories of analysis. A laboratory may choose to assign a particular discipline or category of analysis to a different administrative section or unit in the laboratory than the designation set forth in this subchapter.

(d) If an accreditation for a category of analysis is accompanied by the term 'only' or a similar notation, the Commission will deem the accreditation to exclude other categories of analysis in that discipline.

(e) Accreditation of a confirmation test procedure does not carry automatic accreditation of an associated field, spot, screening, or other presumptive test.

§651.7. Forensic Disciplines Exempt from Commission Accreditation Requirements by Administrative Rule.

(a) The Commission has exempted the following categories of forensic analysis from the accreditation requirement by administrative rule:

- (1) sexual assault examination of a person;
- (2) forensic anthropology, entomology, or botany;
- (3) environmental testing;
- (4) facial or traffic accident reconstruction;
- (5) serial number restoration;
- (6) polygraph examination;
- (7) voice stress, voiceprint, or similar voice analysis;

- (8) statement analysis;
- (9) forensic odontology for purposes of human identification or age assessment, not to include bite mark comparison related to patterned injuries;
- (10) testing and/or screening conducted for sexually transmitted diseases;
- (11) fire scene investigation, including but not limited to cause and origin determinations;
- (12) forensic photography;
- (13) non-criminal paternity testing;
- (14) non-criminal testing of human or nonhuman blood, urine, or tissue, including but not limited to workplace/employment drug testing;
- (15) a crime scene investigation team (whether or not associated with an accredited laboratory) engaged in the location, identification, collection or preservation of physical evidence and the activity is not integral to an expert examination or test;

(16) crime scene reconstruction, including bloodstain pattern analysis and trajectory determination;

(17) confirmatory testing of a human specimen in a laboratory certified by the Centers for Medicare and Medicaid Services of the Department of Health and Human Services (HHS/CMS) under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) for the purposes of referring, offering, or making available treatment or monitoring, conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles, and the results of such testing are subsequently entered into evidence in an action to revise or revoke the terms of an individual's community supervision or parole;[ø]

(18) document examination, including document authentication, physical comparison, and product determination; or

¹⁹ [(18)] other evidence processing or handling that is excluded under §651.2(2) of this title (relating to Definitions).

(b) A request for exemption shall be submitted in writing to the Commission.

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 May 13, 2019.

TRD-201901408

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 936-0661



SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.207

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code §651.207 to remove references to any pre-January 1, 2019, forensic an-

alyst licensing requirements. The pre-January 1, 2019, requirements are no longer applicable. The amendments are non-substantial edits that do not change what is required of any particular analyst. The amendments were adopted at the Commission's May 3, 2019, quarterly meeting and are made in accordance with the Commission's forensic analyst licensing authority under Tex. Code. Crim. Proc. art. 38.01§4-a.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. The amendments are non-substantial edits that do not change what is required of any particular analyst.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendment does not impose any direct costs or fees on municipalities in rural communities. The amendments are non-substantial edits that do not change what is required of any particular analyst.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be notification to forensic analysts of the State's licensing rules with regard to performing forensic analysis.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because the amendments make non-substantial edits that do not change the requirements to get a license.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that there is no anticipated government growth impact as the proposal does not change any current requirements for forensic analysts.

Requirement for Rule Increasing Costs to Regulated Persons. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that there is no anticipated increased costs to regulated persons as the proposal does not change any current requirements for forensic analysts.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 24, 2019, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Tex. Code Crim. Proc. art 38.01 §4-a.

Cross reference to statute. The proposal affects 37 Texas Administrative Code §651.207.

§651.207. Forensic Analyst Licensing Requirements Including License Term, Fee, and Procedure for Denial of Initial Application or Renewal Application and Reconsideration.

(a) Issuance. The Commission may issue an individual's Forensic Analyst License under this section.

(b) Application. Before being issued a Forensic Analyst License, an applicant shall:

(1) demonstrate that he or she meets the definition of Forensic Analyst set forth in this subchapter;

(2) complete and submit to the Commission a current Forensic Analyst License Application form;

(3) pay the required fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;

(B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians/Screeners;

(C) Temporary License fee of \$100;

(D) Provisional License fee of \$220;

(E) License Reinstatement fee of \$220;

(F) Blanket License fee of \$100; and/or

(G) Special Exam Fee of \$50 for General Forensic Analyst Licensing Exam, required only if testing beyond the three initial attempts; and

(4) provide documentation that he or she has satisfied all applicable requirements set forth under this section.

(c) Minimum Education Requirements.

(1) Seized Drugs Analyst. An applicant for a Forensic Analyst License in seized drugs must have a baccalaureate or advanced degree in chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(2) Seized Drugs Technician. An applicant for a Forensic Analyst License limited to the seized drug technician category must have a minimum of an associate's degree or equivalent.

(3) Toxicology (Toxicology Analyst (Alcohol Only, Non-interpretive), Toxicology Analyst (General, Non-interpretive), Toxicologist (Interpretive)). An applicant for a Forensic Analyst License in toxicology must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university.

(4) Toxicology Technician. An applicant for a Forensic Analyst License limited to the toxicology technician category must have a minimum of an associate's degree or equivalent.

(5) Forensic Biology (DNA Analyst, Forensic Biology Screener, Nucleic Acids other than Human DNA Analyst, Forensic Biology Technician). An applicant for any category of forensic biology license must have a baccalaureate or advanced degree in a chemical, physical, biological science or forensic science from an accredited university.

(6) Firearm/Toolmark Analyst. [An applicant for a Forensic Analyst License in firearm/toolmark analysis must have a high school diploma or equivalent degree or higher (i.e., baccalaureate or advanced degree) if the application is submitted before January 1,

2019. If the application is submitted after January 1, 2019;] An [an] applicant for a Forensic Analyst License in firearm/toolmark analysis must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(7) Firearm/Toolmark Technician. An applicant for a Forensic Analyst License limited to firearm/toolmark technician must have a minimum of a high school diploma or equivalent degree.

(8) Document Examination Analyst. [An applicant for a Forensic Analyst License in document examination must have a high school diploma or equivalent degree or higher (i.e., baccalaureate or advanced degree) if the application is submitted before January 1, 2019. If the application is submitted after January 1, 2019;] An [an] applicant for a Forensic Analyst License in document examination must have a baccalaureate or advanced degree in a chemical, physical, biological science, engineering or forensic science from an accredited university.

(9) Document Examination Technician. An applicant for a Forensic Analyst License limited to document examination technician must have a minimum of a high school diploma or equivalent degree.

(10) Materials (Trace) Analyst. An applicant for a Forensic Analyst License in materials (trace) must have a baccalaureate or advanced degree in a chemical, physical, biological science, chemical engineering or forensic science from an accredited university. A Materials (Trace) Analyst performing only impression evidence analyses must have a minimum of a high school diploma or equivalent degree.

(11) Materials (Trace) Technician. An applicant for a Forensic Analyst License limited to materials (trace) technician must have a minimum of a high school diploma or equivalent degree.

(12) Foreign/Non-U.S. degrees. The Commission shall recognize equivalent foreign, non-U.S. baccalaureate or advanced degrees. The Commission reserves the right to charge licensees a reasonable fee for credential evaluation services to assess how a particular foreign degree compares to a similar degree in the United States. The Commission may accept a previously obtained credential evaluation report from an applicant or licensee in fulfillment of the degree comparison assessment.

(13) If an applicant does not meet the minimum education qualifications outlined in this section, the procedure in (f) or (j) of this section applies.

(d) Specific Coursework Requirements.

(1) Seized Drugs Analyst. [An applicant for a Forensic Analyst License in seized drugs must satisfy the specific coursework requirements of the laboratory's accrediting body if the application is submitted before January 1, 2019. If the application is submitted after January 1, 2019;] An [an] applicant for a Forensic Analyst License in seized drugs must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to the chemistry coursework, an applicant [who submits his or her application after January 1, 2019;] must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(2) Toxicology. [An applicant for a Forensic Analyst License in toxicology analysis must satisfy the specific coursework requirements of the laboratory's accrediting body if the application is submitted before January 1, 2019. If the application is submitted after January 1, 2019;] An [an] applicant for a Forensic Analyst License in toxicology must fulfill required courses as appropriate to the analyst's role and training program as described in the categories below:

(A) Toxicology Analyst (Alcohol Only, Non-interpretive). A toxicology analyst who conducts, directs or reviews the alcohol analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university.

(B) Toxicology Analyst (General, Non-interpretive). A toxicology analyst who conducts, directs or reviews the analysis of forensic toxicology samples, evaluates data, reaches conclusions and may sign a report for court or investigative purposes, but does not provide interpretive opinions regarding human performance must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry and two three-semester credit hour (or equivalent) college-level courses in analytical chemistry and/or interpretive science courses that may include Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science, Spectroscopic Analysis, Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology.

(C) Toxicologist (Interpretive). A toxicologist who provides interpretive opinions regarding human performance related to the results of toxicological tests (alcohol and general) for court or investigative purposes must complete a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework that includes organic chemistry, one three-semester credit hour (or equivalent) course in college-level analytical chemistry (Analytical Chemistry, Chemical Informatics, Instrumental Analysis, Mass Spectrometry, Quantitative Analysis, Separation Science or Spectroscopic Analysis) and one three-semester credit hour (or equivalent) college-level courses in interpretive science (Biochemistry, Drug Metabolism, Forensic Toxicology, Medicinal Chemistry, Pharmacology, Physiology, or Toxicology).

(D) An applicant for a toxicology license for any of the categories outlined in subparagraphs (A) - (C) of this paragraph [~~who submits his or her application after January 1, 2019;~~] must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(3) DNA Analyst. An applicant for a Forensic Analyst License in DNA analysis must demonstrate he/she has fulfilled the specific requirements of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing effective September 1, 2011. [~~If the application is submitted after January 1, 2019, the~~] An applicant must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission.

(4) Firearm/Toolmark Analyst. [~~If the application is submitted after January 1, 2019, the~~] An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(5) Document Examination Analyst. [~~If the application is submitted after January 1, 2019, the~~] An applicant must have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. No other specific college-level coursework is required.

(6) Materials (Trace) Analyst. [~~An applicant for a Forensic Analyst License in materials (trace) must satisfy the specific course-~~

~~work requirements of the laboratory's accrediting body if the application is submitted before January 1, 2019. If the application is submitted after January 1, 2019;~~] An [~~an~~] applicant for a Forensic Analyst License in materials (trace) for one or more of the chemical analysis categories of analysis (chemical determination, physical/chemical comparison, gunshot residue analysis, and fire debris and explosives analysis) must have a minimum of sixteen-semester credit hours (or equivalent) in college-level chemistry coursework above general coursework from an accredited university. In addition to chemistry coursework for the chemical analysis categories, all materials (trace) license applicants [~~who submit an application after January 1, 2019;~~] must also have a three-semester credit hour (or equivalent) college-level statistics course from an accredited university or a program approved by the Commission. An applicant for a Forensic Analyst License in materials (trace) limited to impression evidence is not required to fulfill any specific college-level coursework requirements other than the statistics requirement [~~for applications submitted after January 1, 2019~~].

(7) Exemptions from specific coursework requirements. The following categories of licenses are exempted from coursework requirements:

(A) An applicant for the technician license category of any forensic discipline set forth in this subchapter is not required to fulfill any specific college-level coursework requirements.

(B) An applicant for a Forensic Analyst License limited to forensic biology screening, nucleic acids other than human DNA and/or Forensic Biology Technician is not required to fulfill the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing or any other specific college-level coursework requirements.

(e) Requirements Specific to Forensic Science Degree Programs. For a forensic science degree to meet the Minimum Education Requirements set forth in this section, the forensic science degree program must be either accredited by the Forensic Science Education Programs Accreditation Commission (FEPAC) or if not accredited by FEPAC, it must meet the minimum curriculum requirements pertaining to natural science core courses and specialized science courses set forth in the FEPAC Accreditation Standards.

(f) Waiver of Specific Coursework Requirements and/or Minimum Education Requirements for Lateral Hires, Promoting Analysts and Current Employees. Specific coursework requirements and minimum education requirements are considered an integral part of the licensing process; all applicants are expected to meet the requirements of the forensic discipline(s) for which they are applying or to offer sufficient evidence of their qualifications as described below in the absence of specific coursework requirements or minimum education requirements. The Commission Director or Designee may waive one or more of the specific coursework requirements or minimum education requirements outlined in this section for an applicant who:

(1) has five or more years of credible experience in an accredited laboratory in the forensic discipline for which he or she seeks licensure; or

(2) is certified by one or more of the following nationally recognized certification bodies in the forensic discipline for which he or she seeks licensure;

- (A) The American Board of Forensic Toxicology;
- (B) The American Board of Clinical Chemistry;
- (C) The American Board of Criminalistics;
- (D) The International Association for Identification;

(E) The Association of Firearm and Toolmark Examiners; or

(F) The American Board of Forensic Document Examiners; and

(3) provides written documentation of laboratory-sponsored training in the subject matter areas addressed by the specific coursework requirements.

(4) An applicant must request a waiver of specific coursework requirements and/or minimum education requirements at the time the application is filed.

(5) An applicant requesting a waiver from specific coursework requirements and/or minimum education requirements shall file any additional information needed to substantiate the eligibility for the waiver with the application. The Commission Director or Designee shall review all elements of the application to evaluate waiver request(s) and shall grant a waiver(s) to qualified applicants.

(g) General Forensic Analyst Licensing Exam Requirement.

(1) Exam Requirement. An applicant for a Forensic Analyst License must pass the General Forensic Analyst Licensing Exam administered by the Commission.

(A) An applicant is required to take and pass the General Forensic Analyst Licensing Exam one time.

(B) An applicant may take the General Forensic Analyst Licensing Exam no more than three times. If an applicant fails the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam three times, the applicant has thirty (30) days from the date the applicant receives notice of the failure to request special dispensation from the Commission as described in subparagraph (C) of this paragraph. Where special dispensation is granted, the applicant has 90 days from the date he or she receives notice the request for exam is granted to successfully complete the exam requirement. However, for good cause shown, the Commission or its Designee at its discretion may waive this limitation.

(C) Requests for Exam. If an applicant fails the General Forensic Analyst Licensing Exam or Modified General Forensic Analyst Licensing Exam three times, the applicant must request in writing special dispensation from the Commission to take the exam more than three times. Applicants may submit a letter of support from their laboratory director or licensing representative and any other supporting documentation supplemental to the written request.

(D) If an applicant sits for the General Forensic Analyst Licensing Exam or the Modified General Forensic Analyst Licensing Exam more than three times, the applicant must pay a \$50 exam fee each additional time the applicant sits for the exam beyond the three initial attempts.

(E) Expiration of Provisional License if Special Dispensation Exam Unsuccessful. If the 90-day period during which special dispensation is granted expires before the applicant successfully completes the exam requirement, the applicant's provisional license expires.

(2) Modified General Forensic Analyst Licensing Exam. Technicians in any discipline set forth in this subchapter may fulfill the General Forensic Analyst Licensing Exam requirement by taking a modified exam administered by the Commission.

(3) Examination Requirements for Promoting Technicians. If a technician passes the modified General Forensic Analyst Licensing Exam and later seeks a full Forensic Analyst License, the applicant

must complete the portions of the General Forensic Analyst Exam that were not tested on the modified exam.

(4) Credit for Pilot Exam. If an individual passes the Pilot General Forensic Analyst Licensing Exam, regardless of his or her eligibility status for a Forensic Analyst License at the time the exam is taken, the candidate has fulfilled the General Forensic Analyst Licensing Exam Requirement of this section should he or she later become subject to the licensing requirements and eligible for a Forensic Analyst License.

(5) Eligibility for General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam.

(A) Candidates for the General Forensic Analyst Licensing Exam and Modified General Forensic Analyst Licensing Exam must be employees of a crime laboratory accredited under Texas law to be eligible to take the exam.

(B) Student Examinee Exception. A student is eligible for the General Forensic Analyst Licensing Exam one time if the student:

(i) is currently enrolled in an accredited university as defined in §651.202 of this subchapter;

(ii) has completed sufficient coursework to be within 24 semester hours of completing the requirements for graduation at the accredited university at which the student is enrolled; and

(iii) designates an official university representative who will proctor and administer the exam at the university for the student.

(h) Proficiency Testing Requirement.

(1) An applicant must be routinely proficiency-tested in accordance with and on the timeline set forth by the laboratory's accrediting body proficiency testing requirements.

(2) A signed certification by the laboratory's authorized representative that the applicant has satisfied the applicable proficiency testing requirements of the laboratory's accrediting body as of the date of the analyst's application must be provided on the Proficiency Testing Certification form provided by the Commission. For applicants not yet required to be proficiency tested pursuant to the timeline set forth by the accrediting body, the laboratory's authorized representative shall so certify on the form provided by the Commission.

(i) License Term and Fee.

(1) A Forensic Analyst License shall expire two years from the date the applicant is granted a license.

(2) Application Fee. An applicant or licensee shall pay the following fee(s) as applicable:

(A) Initial Application fee of \$220 for Analysts and \$150 for Technicians/Screeners;

(B) Biennial renewal fee of \$200 for Analysts and \$130 for Technicians/Screeners;

(C) Temporary License fee of \$100;

(D) Provisional License fee of \$220;

(E) License Reinstatement fee of \$220; or

(F) Blanket License fee of \$100.

(3) ~~(G)~~ An applicant who is granted a provisional license and has paid the required fee will not be required to pay an additional

initial application fee if the provisional status is removed within one year of the date the provisional license is granted.

(j) Procedure for Denial of Initial Application or Renewal Application and Reconsideration.

(1) Application Review. The Commission Director or Designee must review each initial application or renewal application and determine whether the applicant meets the qualifications and requirements set forth in this subchapter. If a person who has applied for a Forensic Analyst License does not meet the qualifications or requirements set forth in this subchapter and has submitted a complete application, the Director or Designee must consult with members of the Licensing Advisory Committee before denying the application.

(2) Denial of Application. The Commission, through its Director or Designee, may deny an initial or renewal application if the applicant fails to meet any of the qualifications or requirements set forth in this subchapter.

(3) Notice of Denial. The Commission, through its Director or Designee, shall provide the applicant a written statement of the reason(s) for denial of the initial or renewal application.

(4) Request for Reconsideration. Within twenty (20) days of the date of the notice that the Commission has denied the application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.

(5) Reconsideration Procedure. The Commission must consider a request for reconsideration at its next meeting where the applicant may appear and present testimony.

(6) Commission Action on Request. After reconsidering its decision, the Commission may either affirm or reverse its original decision.

(7) Final Decision. The Commission, through its Director or Designee, must notify the applicant in writing of its decision on reconsideration within fifteen (15) business days of the date of its meeting where the final decision was rendered.

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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Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 936-0661



37 TAC §651.216

The Texas Forensic Science Commission ("Commission") proposes an amendment to 37 Texas Administrative Code §651.216 related to its forensic analyst licensing program to provide clarification that the Commission may take disciplinary action in the form of a license denial for a person who has never held a forensic analyst license upon a finding of professional misconduct by the applicant. The amendment is necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The adoptions were made in accordance with the Commission's

authority under Article 38.01 §4-a(d), Code of Criminal Procedure which requires the Commission to create a forensic analyst licensing program.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendment will be in effect, there is no anticipated fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. The proposal clarifies the authority of the Commission to approve applications where there is a misconduct finding for a licensee who has never been licensed before.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed rules do not impose any direct costs on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be sufficient and accurate notification regarding the consideration of misconduct findings with regard to forensic analyst license eligibility.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendment will not have an adverse economic effect on any small or micro businesses because there are no anticipated economic costs.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The proposal clarifies the authority of the Commission to deny an application for a license where there is misconduct finding against a license applicant.

Requirement for Rule Increasing Costs to Regulated Persons. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined the proposed rule imposes no cost on regulated persons.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 24, 2019, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Texas Code Crim. Proc. art 38.01 §4-a.

Cross reference to statute. The proposal affects 37 Texas Administrative Code §651.216.

§651.216. *Disciplinary Action.*

(a) The Commission may take disciplinary action against a license holder or applicant for a license under certain limited circumstances as set forth in Article 38.01, Code of Criminal Procedure.

(b) Professional Misconduct Finding. On a determination by the Commission that a license holder or applicant for a license has committed professional misconduct in accordance with the definition provided in §651.202 of this subchapter and under Article 38.01, Code of Criminal Procedure or violated Article 38.01, Code of Criminal Procedure, or a rule or order of the Commission under Article 38.01, Code of Criminal Procedure, the Commission may:

- (1) revoke or suspend the person's license;
- (2) refuse to renew the person's license;[øf]
- (3) reprimand the license holder; or[-]
- (4) deny the person a license.

(c) Probation. The Commission may place on probation a person whose license is suspended. If a license suspension is probated, the Commission may require the license holder to:

- (1) report regularly to the Commission on matters that are the basis of the probation; or
- (2) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the Commission in those areas that are the basis of the probation.

(d) State Office of Administrative Hearings. Disciplinary proceedings of the Commission are governed by Chapter 2001, Government Code. A hearing under this section shall be conducted by an administrative law judge of the State Office of Administrative Hearings.

(e) State Office of Administrative Hearings procedural rules governed by Chapter 2001, Government Code apply to the extent not inconsistent with Commission rules in this subchapter.

(f) Proposals for decision issued by a State Office of Administrative Hearings judge shall be considered by the Commission to be proposals for final decision and either adopted, changed or reversed by the Commission to the extent permitted by Chapter 2001, Government Code.

(g) Procedure for Opportunity for Hearing and Participation and Notice of Disciplinary Action. If revocation, suspension, reprimand, refusal to renew or probation of a Forensic Analyst License is proposed by the Commission based on subsection (b) of this section, the Commission shall, within ten business (10) days, give written notice of the basis of the proposal and state that the licensee or applicant must request, in writing, a hearing within thirty (30) business days of receipt of the notice, or the right to a hearing shall be waived and the disciplinary action stands.

(h) Notice of Hearing; Contents. The Commission shall provide timely notice of any scheduled hearing related to disciplinary action taken by the Commission to the person or party against which the action is taken. The notice must include:

- (1) a statement of the time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved; and

(4) either;

(A) a short, plain statement of the factual matters asserted; or

(B) an attachment that incorporates by references the factual matters asserted in the complaint or petition filed with the Commission.

(i) Limited Statement. If the Commission is unable to state factual matters in detail at the time notice is served, an initial notice may be limited to a statement of the issues involved. On timely written application by a licensee, a more definite and detailed statement of the facts shall be furnished not less than seven (7) days before the date set for the hearing.

(j) Right to Counsel. Each party in a contested case is entitled to the assistance of counsel before the Commission. The Commission is not responsible for any legal fees. A party may expressly waive the right to assistance of counsel.

(k) Appeals. Any appeals shall be resolved in accordance with Chapter 2001, Government Code.

(l) License Status.

(1) If a license holder makes timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally determined by the Commission. If the application is denied or the terms of the new license are limited, the existing license does not expire until the last day for seeking review of a Commission decision or a later date fixed by order of the reviewing court.

(2) A revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of Commission proceedings:

(A) the Commission gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action; and

(B) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license.

(3) A Forensic Analyst License remains valid unless it expires without timely application for renewal, is amended, revoked, suspended, annulled or withdrawn, or the denial of a renewal application becomes final. The term or duration of a license is tolled during the period the license is subjected to judicial review. However, the term or duration of a license is not tolled if, during judicial review, the licensee engages in the activity for which the license was issued.

(m) Interpreters for Deaf or Hearing Impaired Parties and Witnesses.

(1) In contested cases, the Commission shall provide an interpreter whose qualifications are approved by the Texas Department of Assistive and Rehabilitative Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.

(2) In this section, "deaf or hearing impaired" means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.

(n) Informal Disposition of Contested Case. Unless precluded by law, an informal disposition may be made of a contested case by:

- (1) stipulation;
- (2) agreed settlement;

- (3) consent order; or
- (4) default.

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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Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

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For further information, please call: (512) 936-0661



SUBCHAPTER D. PROCEDURE FOR PROCESSING COMPLAINTS AND LABORATORY SELF-DISCLOSURES

37 TAC §651.302

The Texas Forensic Science Commission ("Commission") proposes amendments to 37 Texas Administrative Code §651.302 related to its procedure for processing complaints and laboratory self-disclosures to provide clarification in its definitions of professional negligence and professional misconduct to reflect definitions in Code of Criminal Procedure 38.01 that were not available when the Commission first defined the terms professional negligence and professional misconduct. The amendments are necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The adoptions were made in accordance with the Commission's authority under Article 38.01 §4(a)(3), Code of Criminal Procedure, which requires the Commission to investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there is no anticipated fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There is no anticipated effect on local employment or the local economy as a result of the proposal. The proposal provides necessary clarification on the Commission's definitions of professional negligence or professional misconduct pursuant to the Commission's authority to investigate allegations of professional negligence or professional misconduct.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed rules do not impose any direct costs on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be sufficient and accurate notification to the forensic and criminal justice community on the definitions of the terms professional negligence and professional misconduct.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendments will not have an adverse economic effect on any small or micro businesses because there are no anticipated economic costs.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The proposal provides necessary clarification on the Commission's definitions of professional negligence or professional misconduct pursuant to the Commission's authority to investigate such allegations with respect to forensic analysts and crime laboratories.

Requirement for Rule Increasing Costs to Regulated Persons. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined the proposed rule imposes no cost on regulated persons.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by June 24, 2019, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Tex. Code Crim. Proc. art 38.01 §4(a)(3).

Cross reference to statute. The proposal affects 37 Texas Administrative Code §651.302.

§651.302. Definitions.

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

(1) Accredited field of forensic science—means a specific forensic method or methodology validated or approved by the Commission under Article 38.01, Code of Criminal Procedure §4-d as part of the accreditation process for crime laboratories.

(2) Crime laboratory—has the meaning assigned by [means a public or private laboratory or other entity that conducts forensic analysis subject to] Article 38.35, Code of Criminal Procedure [this article].

(3) Forensic analysis—has the meaning assigned by Article 38.35, Code of Criminal Procedure. The term does not include:

- (A) latent print examination;
- (B) a test of a specimen of breath under Chapter 724, Transportation Code;
- (C) digital evidence;

(D) an examination or test excluded by rule under Article 38.01, Code of Criminal Procedure;

(E) a presumptive test performed for the purposes of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or

(F) an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of physical evidence to a criminal action;

(4) Forensic pathology-includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(5) Accredited laboratory-includes a public or private laboratory or other entity that conducts forensic analysis as defined in Article 38.35, Code of Criminal Procedure and is accredited by a national accrediting body recognized by the Commission and listed in §651.4 of this title.

(6) Physical evidence-has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(7) Professional misconduct-means the forensic analyst or crime laboratory [aetor], through a material act or omission, deliberately failed to follow a [the] standard of practice [generally accepted at the time of the forensic analysis] that an ordinary forensic analyst [professional] or crime laboratory [entity] would have followed [exercised], and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory [aetor] was aware of and consciously disregarded an accepted standard of practice [required for a forensic analysis].

(8) Professional negligence-means the forensic analyst or crime laboratory [aetor], through a material act or omission, negligently failed to follow the standard of practice [generally accepted at the time of the forensic analysis] that an ordinary forensic analyst [professional] or crime laboratory [entity] would have followed [exercised], and the negligent act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was negligent if the forensic analyst or crime laboratory [aetor] should have been but was not aware of an accepted standard of practice [required for a forensic analysis].

(9) For purposes of these definitions, the term "standard of practice" includes any of the activities engaged in by a "forensic analyst" as those activities are defined in Article 38.01, Code of Criminal Procedure. "Forensic analyst" means a person who on behalf of a crime laboratory accredited under Article 38.01, Code of Criminal Procedure technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory.

(10) [(9)] The term "would substantially affect the integrity of the results of a forensic analysis" does not necessarily require that a criminal case be impacted or a report be issued to a customer in error. The term includes acts or omissions that would call into question the integrity of the forensic analysis, the forensic analyst or analysts [individual forensic examiner], or the crime laboratory as a whole [into question] regardless of the ultimate outcome in [on] the underlying criminal case.

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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Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 450. VETERANS COUNTY SERVICE OFFICERS CERTIFICATE OF TRAINING

40 TAC §§450.1, 450.3, 450.5

The Texas Veterans Commission (commission) proposes amendments to §450.1, §450.3, and §450.5 of Title 40, Part 15, Chapter 451 of the Texas Administrative Code concerning Veterans County Service Officers Certification.

PART I. PURPOSE AND BACKGROUND

In 2018, the commission made rule changes to Texas Administrative Code Rule 450 to comply with Senate Bill (SB) 544, 85th Legislature, Regular Session, which amended §434.038 of the Texas Government Code, relating to the required training for Veterans County Service Officers' and Assistant Veterans County Service Officers' certification.

Specifically, SB 544 required the commission to implement a procedure to approve training provided by third-party, public or private entities, to fulfill initial and continuing training requirements established by the commission. SB 544 took effect on September 1, 2017.

Since the rule amendments were adopted by the commission in 2018, it became apparent that the steps outlined in §450.3(g) were overly cumbersome. Specifically, some private and public VA recognized organizations were reluctant to share their testing materials because they were proprietary. Further, the majority of the third-party entities are VA recognized organizations and their testing materials had been approved by the VA for certification, and therefore, the commission should accept their testing materials for certification or accreditation because their materials had already been reviewed and accepted by the VA.

The rule changes to §450.3(g) proposed here attempt to solve the issues presented by the initial language of the rule affecting the third-party testing entities, and would allow the commission to accept third-party testing materials already approved by the VA to satisfy certification and accreditation training. But for those third-party entities who had not been previously approved by the VA for certification or accreditation training, the third-party would be required to comply with commission review of the materials-regardless of their proprietary nature.

The remainder of the proposed changes is non-substantive.

PART II. EXPLANATION OF SECTIONS

§450.1. Definitions.

The proposed amendment to §450.1(3) removes "a given number of" as that term is confusing or redundant. The remainder of the provision is left intact and is harmonized with §451.1(5), defining the same subject-matter, i.e., "credit hour."

§450.3. General Provisions.

Subsection (c) inserts "same" between "the" and "fiscal." The changes are not intended to alter the meaning of the provision, but instead, represent only a clarification of the provision.

Subsection (d) changes "will" to "shall." The change is not intended to alter the meaning of the provision but is proposed to more clearly reflect the intent of the provision.

Subsection (e) represents a non-substantive rule amendment in response to a recent program title change from "Claims Representation and Counseling (Program)" to "Claims Department."

The changes to Subsection (g) are substantive and in response to the impracticality of requiring all third-party testing entities to provide their testing materials to commission staff for review and approval. The new provision provides that if a third-party testing entity has previously been approved by the VA for certification or accreditation, the third-party need not submit its materials to the commission for additional approval. However, if the third-party has not obtained prior approval from the VA, it must submit its materials to the commission for approval. The proposed amendment also harmonizes the commission's third-party training approval to align with the United States Department of Veterans Affairs (VA) training guidelines.

Subsection (g)(3) proposes non-substantive rule amendments which are proposed in response to a recent program title change from "Claims Representation and Counseling (Program)" to "Claims Department." Additionally, a non-substantive change removing the hyphen from "third-party" is made to be consistent with all other uses of the term. The word "utilizing" is replaced with "using," reflecting a non-substantive, preferred word choice.

Subsection (g)(2) - (4) reflect required renumbering and make non-substantive, syntactical changes to (A) & (B).

Subsection (i) represents a non-substantive rule amendment in response to a recent program title change from "Claims Representation and Counseling (Program)" to "Claims Department." Additionally, the optional plurals ("(s)") are removed as unnecessary.

§450.5. Documentation of Attendance.

The proposed amendment to §450.5 is non-substantive and removes the word "respective" as redundant and, therefore, unnecessary.

PART III. IMPACT STATEMENTS

FISCAL NOTE

Michelle Nall, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed amendments to rules §450.1(1), §450.3, and §450.5 will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed amendments to rules §450.1, §450.3, and §450.5.

COSTS TO REGULATED PERSONS

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

LOCAL EMPLOYMENT IMPACT

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

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

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

PUBLIC BENEFIT

Cruz Montemayor, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed amendments to rules §450.1, §450.3, and §450.5 are in effect, the public benefit anticipated as a result of administering the proposed amendments to rules §450.1, §450.3, and §450.5 will be positive.

GOVERNMENT GROWTH IMPACT STATEMENTS

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

- (1) The proposed amendments to the rules will not create or eliminate a government program.
- (2) Implementation of the proposed amendments to the rules will not require creation of new employee positions, or elimination of existing employee positions.
- (3) Implementation of the proposed amendments to the rules will not require an increase or decrease in future legislative appropriations to the agency.
- (4) No fees will be created by the proposed amendments to the rules.
- (5) The proposed amendments to the rules will not require new regulations.
- (6) The proposed amendments to the rules have no effect on existing regulations.
- (7) The proposed amendments to the rules have no effect on the number of individuals subject to the rules' applicability.
- (8) The proposed amendments to the rules have no effect on the state's economy.

PART IV. COMMENTS

Comments on the proposed amendments to the rules may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 475-2395; or emailed to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 450 Rules" in the subject line. The Commission must receive

comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

PART V.

STATUTORY AUTHORITY

The proposed amendments to the rules are authorized under Texas Government Code §434.010, which permits the commission to establish rules it considers necessary for its administration. The proposed amendments to the rules will further implement amended Texas Government Code §434.038, enacted by Senate Bill 544, 85th Legislature, Regular Session, 2017.

No other statutes, articles, or codes are affected by this proposal.

§450.1. Definitions.

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

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

(3) Credit hour--Unit of measuring credit earned for attending [a given number of] classroom or virtual training courses provided by the commission or other commission approved training.

(4) - (7) (No change.)

§450.3. General Provisions.

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

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

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

(e) All initial training and continuing training requirements are set and approved by the commission Claims Department [Representation and Counseling] Director or designee. Initial training and continuing training requirements shall be resubmitted and reevaluated biennially at a minimum.

(f) (No change.)

(g) Acceptance of credit hours earned through third party training: [-]

(1) If training is provided by a VA Recognized Veterans Service Organization, whose accreditation training has been approved by the VA, the commission shall accept the training credit hours.

(2) [(4)] For all other third party training, the organization shall provide the commission with [The commission must receive from the organization providing the training] the following information to allow for the awarding of credit hours to officers:

- (A) Name of organization providing the training;
- (B) Documentation from the VA;
- (C) Course title and description;
- (D) Course outline; and
- (E) All course materials.

(3) [(2)] Third party training and testing must be evaluated by the commission Claims Department [Representation and Counsel-

ing] Director or designee [using the requirements set and approved] in accordance with subsection (f) of this section. The number of credit hours to be awarded for third party training is determined by review of the third party [third-party] training curriculum by the commission Claims Department [Representation and Counseling] Director[-], and the commission Training and Event Manager]. Review and awarding of credit hours will be conducted using [utilizing] the curriculum review matrix.

(4) [(3)] To receive credit hours for third party training, the training must be approved by the commission in accordance with paragraph (1) of this subsection prior to the officer's attendance. Officers must submit a request to the commission containing the following information:

- (A) Name of the training [Training] provider;
- (B) Title of the course;
- (C) Certificate or verification of completion; and
- (D) Date of completion.

(h) (No change.)

(i) Inquiries concerning the certification process shall be directed to and answered by the commission Claims Department [Representation and Counseling] Director. Disputes shall be reviewed and a decision rendered by the commission Claims Department [Representation and Counseling] Director or designee. Disputes which remain unresolved shall be referred to the executive director of the commission or the executive director's designee [designee(s)]. The decision of the executive director or the executive director's designee [designee(s)] shall be final.

§450.5. Documentation of Attendance.

(a) (No change.)

(b) The commission shall inform each county commissioners court of its [respective] officer(s)' [officers'] compliance with Texas Government Code §434.038.

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 May 10, 2019.

TRD-201901392

Madeleine Connor

General Counsel

Texas Veterans Commission

Earliest possible date of adoption: June 23, 2019

For further information, please call: (512) 463-3605

CHAPTER 451. VETERANS COUNTY SERVICE OFFICERS ACCREDITATION

40 TAC §451.1, §451.3

The Texas Veterans Commission (commission) proposes amendments to §451.1 and §451.3 of Title 40, Part 15, Chapter 451 of the Texas Administrative Code concerning Veterans County Service Officers Accreditation.

PART I. PURPOSE AND BACKGROUND

In 2018, the commission made rule changes to Texas Administrative Code Rule 451 to comply with Senate Bill (SB) 544, 85th

Legislature, Regular Session, which amended §434.038 of the Texas Government Code, relating to the required training for Veterans County Service Officers' and Assistant Veterans County Service Officers' accreditation. SB 544 required the commission to approve training provided by public or private entities to fulfill initial and continuing training requirements established by the commission. SB 544 took effect on September 1, 2017.

Since the rule amendments were adopted by the commission in 2018, it became apparent that several provisions needed revision, and the rule changes proposed here attempt to solve those issues going forward. Also proposed are non-substantive changes to harmonize Rule 451's key definitions with Title 38 of the U.S. Code of Federal Regulations, and minor revisions to improve clarity and to reflect the recent name change of the Claims Department.

PART II. EXPLANATION OF SECTIONS

§451.1 Definitions.

The proposed amendments to §451.1(4),(8),(9) are necessary to harmonize the Claims Department's definition of "recognized organization" with the VA's definition in the Code of Federal Regulations defining the same category of entities. Thus, the changes are only intended to make the rules consistent with federal law, and do not change the meaning or intent of the state rules. See 38 C.F.R. § 14.628(b)(1).

The proposed amendment to §451.1(5) is necessary to make the provision consistent with the same provision in §450.1(3) concerning the same subject matter. Specifically, the rule is not intended to change the meaning of the definition of "credit hours," but merely makes it consistent with §450.1(3), which was the clearer of the two provisions.

§451.3. General Provisions.

Subsection (a)(3) changes the word the word "claim" to "claims." The change is not intended to alter the meaning of the provision, but instead, represents only a grammatical change.

Subsection (d) changes the word "Officer" to "Officers," removes the article "a" before "formal" and pluralizes "request" to "requests." The changes are not intended to alter the meaning of the provision, but instead, represent only grammatical changes.

Subsection (f) changes the word "obtain" to "meet" and the word "will" to "shall." The change to "meet" from "obtain" is not intended to alter the meaning of the provision, but instead, represents only a grammatical change. The change to "shall" from "will" is proposed to more clearly reflect the intent of the provision.

Subsection (h) changes the word the word "officer" to "Officers," removes the article "The," and inserts the word "all" between "follow" and "procedures." The changes are not intended to alter the meaning of the provision, but instead, represent only a grammatical clarification of the provision.

Non-substantive rule amendments in subsection §451.3(k) are proposed in response to a recent program title change from "Claims Representation and Counseling Program" to "Claims Department."

Subsection (l)(3) changes the word the word "to" to "in." The change is not intended to alter the meaning of the provision, but instead, represents only a grammatical change.

PART III. IMPACT STATEMENTS

FISCAL NOTE

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

COSTS TO REGULATED PERSONS

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

LOCAL EMPLOYMENT IMPACT

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

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

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

PUBLIC BENEFIT

Cruz Montemayor, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule amendments are in effect, the public benefit anticipated as a result of administering the proposed rule amendments will increase Veterans County Service Officers' compliance to receive and maintain certification to assist more veterans in the State of Texas.

GOVERNMENT GROWTH IMPACT STATEMENTS

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

- (1) The proposed rule amendments will not create or eliminate a government program.
- (2) Implementation of the proposed rule amendments will not require creation of new employee positions, or elimination of existing employee positions.
- (3) Implementation of the proposed rule amendments will not require an increase or decrease in future legislative appropriations to the agency.
- (4) No fees will be created by the proposed rule amendments.
- (5) The proposed rule amendments will not require new regulations.
- (6) The proposed rule amendments have no effect on existing regulations.
- (7) The proposed rule amendments have no effect on the number of individuals subject to the rules' applicability.
- (8) The proposed rule amendments have no effect on the state's economy.

PART IV. COMMENTS

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

PART V. STATUTORY AUTHORITY

The proposed rule amendments are proposed under Texas Government Code §434.010, which authorizes the commission to establish rules it considers necessary for its administration.

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

§451.1. Definitions.

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

(1) Accreditation--Recognition by the United States Department of Veterans Affairs (VA) of representatives, attorneys, and agents to represent claimants.

(2) Accredited representative of the Texas Veterans Commission--A representative of the Texas Veterans Commission approved by the secretary for the preparation, presentation, and prosecution of claims under laws administered by the secretary.

(3) Certified--Having met the requirements of §450.3 of this title (relating to General Provisions) for "certification."

(4) Commission--The Texas Veterans Commission, which is a "Recognized Veterans Service Organization [recognized organization]" by the United States Department of Veterans Affairs.

(5) Credit hour--Unit of measuring credit earned for attending [a number of] classroom or [periods at a commission training event. Or] virtual training courses provided by the [at a] commission [training event] or other commission approved training.

(6) Initial training--Introductory training completed by newly appointed officers as defined in Chapter 450 of this title (relating to Certificate of Training).

(7) Officer--Veterans county service officer or assistant veterans county service officer appointed by a county commissioners court.

(8) Recognized Veterans Service Organization [organization]--An organization certified by the United States Department of Veterans Affairs to represent claimants.

(9) Representative--Person who has been recommended by a Recognized Veterans Service Organization [recognized organization] and accredited by the United States Department of Veterans Affairs.

(10) Secretary--The secretary of the United States Department of Veterans Affairs.

(11) Training event--Training or testing conducted by the commission.

§451.3. General Provisions.

(a) All officers shall be provided a copy of information concerning accreditation by the commission when information is received indicating an appointment has been made by a county commissioners court.

(b) Officers must meet the following minimum standards as set forth in 38 Code of Federal Regulations §14.629 for consideration to be an accredited representative of the commission:

(1) is a paid employee of the county working for it not less than 1,000 hours annually;

(2) has successfully completed a course of training and an examination which have been approved by the appropriate VA district counsel within the state; and

(3) will receive annual training to assure continued qualification as a representative in the claims' [elaim] process.

(c) To be an accredited representative of the Texas Veterans Commission, the officer must be currently certified by the commission under the provisions of §450.3 of this title (relating to General Provisions), have attained at least 24 credit hours after completion of initial training requirements, and pass a proficiency exam.

(d) All officers [Officer] must submit a formal written request for accreditation to the commission, which shall [will] review the application for eligibility and approval.

(e) Credit hours may be earned by attending training sponsored or conducted by organizations other than the commission in accordance with §450.3 of this title.

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

(g) Examinations for accreditation and examinations to maintain accreditation will be administered by the commission at location [a location((s))] and time [time((s))] designated by the commission.

(h) Officers [The officer] must agree to follow procedures promulgated by the commission.

(i) When all criteria have been met by the officer, the commission will request accreditation from the United States Department of Veterans Affairs via VA Form 21.

(j) To maintain accreditation, an officer must successfully pass, at least annually, a proficiency exam and be certified under the provisions of §450.3 of this title.

(k) Inquiries concerning accreditation shall be directed to and answered by the commission Claims Department [Representation and Counseling] Director. Disputes shall be reviewed and a decision rendered by the commission Claims Department [Representation and Counseling] Director or designee. Disputes which remain unresolved shall be referred to the executive director of the commission or the executive director's designee [designee(s)]. The decision of the executive director or the executive director's designee [designee(s)] shall be final.

(l) The executive director of the commission or the executive director's designee [designee(s)] will:

(1) Revoke the accreditation of the officer upon termination of the officer.

(2) Suspend or revoke the accreditation of an officer for the officer's failure to:

(A) maintain commission annual training requirements; []

(B) maintain the commission annual testing requirements; []

or

(C) maintain the VA's annual training requirements;^{5]}

(D) maintain active use of the VA's database systems.

(3) Suspend or revoke the accreditation of the officer for any situation in [†] which the action is deemed appropriate.

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 May 10, 2019.

TRD-201901393
Madeleine Connor
General Counsel
Texas Veterans Commission

Earliest possible date of adoption: June 23, 2019
For further information, please call: (512) 463-3605



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

The Public Utility Commission of Texas (commission) adopts an amendment to §25.505, relating to resource adequacy in the Electric Reliability Council of Texas power region, with changes to the proposed text as published in the January 11, 2019 issue of the *Texas Register* (44 TexReg 175). The amended rule will be republished.

The commission also repeals §25.508, relating to the high system-wide offer cap in the Electric Reliability Council of Texas power region. The amendment to §25.505 improves market certainty and clarity with respect to the Electric Reliability Council of Texas (ERCOT) market. The repeal of §25.508 removes obsolete language from the commission's rules. This amendment and repeal are adopted under Project Number 48721.

The commission received comments on the proposed amendment and repeal from ERCOT; Gerdau Long Steel North America, Nucor Steel Texas, and CMC Steel Texas (collectively, ERCOT Steel Mills); Invenergy LLC; the Lower Colorado River Authority (LCRA); the Texas Energy Association for Marketers and Direct Energy (collectively, the REP Group); South Texas Electric Cooperative, Inc. (STEC); Texas Competitive Power Advocates (TCPA); Texas Electric Cooperatives, Inc. (TEC); and Texas Industrial Energy Consumers (TIEC). The commission received reply comments from Invenergy, the REP Group, STEC, TCPA, TIEC, and TEC. No party requested a hearing.

Response to Question About Eliminating the Low System-Wide Offer-Cap (LCAP)

The ERCOT Steel Mills and TIEC supported retaining the LCAP. Both noted that it was imperfect, but argued that it is currently the only "circuit breaker" in the rule, which acts by suspending scarcity pricing under extreme conditions. The ERCOT Steel Mills and TIEC added that all other markets contain a similar feature. TIEC and the REP Group noted that the pricing required to trigger the LCAP is extreme and any triggering of the LCAP would demonstrate that the current scarcity pricing mechanisms are overly aggressive. Similarly, ERCOT Steel Mills stated that, if the "3X" Cost of New Entry (CONE) threshold is reached, then the current LCAP could impede the market from generating an appropriate scarcity pricing signal when true scarcity conditions

may still be ongoing, but that generators would have received more than sufficient revenue and consumers would have paid extraordinary energy costs. STEC also supported retaining the LCAP, noting that the LCAP is intended to prevent windfall revenues to generators, and, in a time of tight reserve margins, it is not appropriate to remove this customer protection.

TEC supported retaining the LCAP to protect consumers, including cooperative loads, from sustained high prices. TEC argued that the rationale for LCAP, to protect loads from sustained high prices, remains relevant today.

The REP Group supported retaining the LCAP as a means of price protection against sustained high prices. The REP Group noted that the LCAP still allows pricing up to \$2,000 per MWh.

Invenergy and TCPA recommended that the commission eliminate the LCAP. Invenergy stated that the LCAP predates the implementation of the Operating Reserve Demand Curve (ORDC), which now incents both loads and resources to take actions to maintain system reliability, and therefore the LCAP constraint is no longer necessary. TCPA pointed to the current tight reserve margins, noting that the ERCOT market design should not include mechanisms that are inconsistent with the goal of promoting resource adequacy in the energy-only market. TCPA stated that the LCAP presents a fundamental asymmetry in that low prices can worsen resource adequacy. TCPA further argued that the LCAP potentially handicaps the ability of the market to signal that investment is needed by capping high prices that are driven by resource shortages. TCPA stated that, in the 13 years since the establishment of the LCAP, market experience through a variety of conditions has not demonstrated a need for the LCAP, as the Peaker Net Margin has never been reached. TCPA stated that scarcity should be priced when it is needed, which requires eliminating the LCAP.

TCPA also stated that, if the LCAP were triggered, most end-use customers should be protected from exposure by their REPs' bilateral contracts. TCPA asserted that the sustained pricing that would trigger the LCAP also would quickly draw increased investment into the wholesale market and incite other actions that would naturally limit the duration of the pricing.

In reply comments, the REP Group stated that no commenter concluded that the LCAP would distort prices downward in a time the market is functioning well. The REP Group stated that the LCAP is insurance to keep the market functional in the face of unprecedented market pricing. In reply to statements that the LCAP is inherently inconsistent with the concept of load shed at the Value of Lost Load (VOLL), the REP Group stated that the LCAP would be effective only when there was a distortion in the marketplace. The REP Group noted that the commission already has other regulatory measures similar to the LCAP, such as the ORDC, which do not allow market forces to control.

STEC recommended that, if the LCAP is eliminated, the annual Peaker Net Margin threshold continue to be calculated for purposes of measuring market performance.

Commission Response

The commission declines to eliminate the LCAP at this time. The commission notes that the LCAP has been in place since 2006, and the interests of the market as a whole are served by continuity and the regulatory certainty provided by the LCAP.

General Comments

STEC supported the proposed changes to §25.505 and §25.508, including the modifications of the natural gas price indices used in the calculation of the Peaker Net Margin, and the removal of obsolete language and policy references. Similarly, Invenergy supported the proposed amendments in §25.505 (a) through (f).

Subsection (a)

LCRA recommended retaining language in the title and in subsection (a) that identifies the nexus between the scarcity pricing mechanism and the goal of ensuring resource adequacy and reliability in ERCOT, and suggested language to this effect in both the title of the rule and in subsection (a).

Commission Response

The commission declines to make this change. The commission believes the title and subsection (a) as proposed accurately reflect the intent of the rule, which is to establish the scarcity pricing mechanism and reporting requirements for the ERCOT power region. The commission makes no changes to the languages as proposed.

Subsection (b)

Invenergy supported the proposed amendments. The REP Group recommended modifying the definition of "load entity" to clarify that the term "load resource" would have the definition used for that term in the ERCOT Protocols. The term "load resource" is not defined in the commission's rules, and the REP Group argued that referencing the definition in the ERCOT Protocols allows the definition to evolve as technology changes. In reply comments, TCPA stated that the terms "load entity," "generation entity," and "resource entity" do not appear in the rule language and therefore should be deleted.

Commission Response

The commission makes changes to the proposed rule to define the term "load resource" by directly incorporating its definition from the ERCOT Protocols into this rule. The commission believes this change will clarify the meaning of the term "load resource" as referenced in the rule.

In response to TCPA's comments, the commission notes that the plural of the terms "load entity," "generation entity," and "resource entity" are used throughout the rule to specify the reporting requirements for certain market participants to ERCOT. The commission declines to make TCPA's proposed change, and instead retains these definitions in the adopted rule.

Subsection (c)

Invenergy supported the proposed amendments. ERCOT recommended preserving language that requires ERCOT to address projected system demand in its resource adequacy reports. ERCOT indicated that it believes that any report address-

ing resource adequacy would require a forecast of both supply and demand, and recommended adding specific language requiring the forecasts to include projected system demand. In reply comments, STEC supported ERCOT's proposed change to clarify the resource adequacy reports.

Commission Response

The commission agrees with ERCOT'S comments and changes the proposed rule to preserve language that requires ERCOT to address projected system demand in its resource adequacy reports. This change will clarify that ERCOT is to include projected system demand in these reports.

Subsection (f)

LCRA observed that some of the reporting requirements the proposed amendments would delete from subsection (f) are also found in the ERCOT Protocols. LCRA opined that the reporting requirements should be reinstated in order to ensure transparency and fair access to information by all market participants. LCRA stated that changes to the commission's rules are governed by the robust protections of the Texas Administrative Procedure Act, which does not apply to the ERCOT Protocols. In reply comments, STEC agreed with LCRA that ERCOT's reporting requirements should be maintained in the commission's substantive rules.

The ERCOT Steel Mills did not oppose the deletion of language from the current rule that duplicates requirements set out in the ERCOT Protocols, but observed that language regarding the forecasting, reporting, and publication of resource, load, and reserve margin information underpins the current language in the ERCOT Protocols. The ERCOT Steel Mills declared that it is in the public interest to ensure that information regarding resource adequacy, collateral generation capacity, and load data information is robustly reported and freely disseminated to market participants. The ERCOT Steel Mills asserted that, while the proposed deletions will afford ERCOT and market participants more flexibility, some tethering to the commission rules would be beneficial. The ERCOT Steel Mills requested that, if the commission repeals subsection (f), that it state in the preamble to the order repealing subsection (f) that this type of information is necessary and valuable. The ERCOT Steel Mills further requested that the commission explain that the intent of the repeal is simply to afford more flexibility for improving and enhancing the current forecasting, reporting, and publication requirements found within the current ERCOT Protocols. The ERCOT Steel Mills also asked that the commission carefully review modifications in this area to ensure that future changes improve and do not diminish the requirements.

TEC agreed with retaining reporting requirements for the sake of transparency, even if the result is a rule that duplicates the ERCOT Protocols.

In reply comments, the REP Group supported changes to ensure that the commission's rule clarifies the market information reporting obligations for ERCOT.

Commission Response

The commission agrees with the parties that there is value in retaining the reporting requirements to provide certainty about the type of information that ERCOT will publish to the market. The commission therefore retains subsection (f) to set expectations for the market and ensure transparency. The commission removes obsolete language, updates other

language to reflect contemporary terminology, and modifies subsection (f) to improve clarity.

Subsection (g) (Proposed Subsection (f))

If the commission were to eliminate the LCAP, TCPA recommended that the subsection be retitled "scarcity pricing parameters."

Commission Response

Because the LCAP is not being eliminated in the adopted rule, TCPA's recommendation is not applicable.

Subsection (g)(2) (Proposed Subsection (f)(2))

Several parties commented on the heat rate multiplier in subsection (g)(2), which factors into the Peaker Net Margin calculation. The ERCOT Steel Mills and TIEC recommended modifying the heat rate multiplier in the Peaking Operating Cost from ten to eight MMBtu per MWh to reflect new peaking technologies. The ERCOT Steel Mills noted that the current multiplier of ten represented the prevailing typical heat rate of a gas-fired simple cycle peaking unit at the time the rule was originally adopted, and argued that the rule should be updated to reflect currently available technology. In reply comments, the REP Group agreed with TIEC and the ERCOT Steel Mills that the ten times multiplier is not reflective of the current market, and that an eight times multiplier should be used instead.

In reply comments, STEC responded that the peaking units referenced by the ERCOT Steel Mills and TIEC have heat rates that are closer to nine MMBtu per MWh, and that there are no peaking units of this type currently operating within ERCOT or planned to be developed. STEC noted the ERCOT interconnection queue only shows planned peaking units with heat rates at or above ten MMBtu per MWh. STEC argued that lowering the heat rate multiplier, which would lower the threshold for the Peaker Net Margin, would have no justification and would further jeopardize the continued availability of existing resources by negating revenue streams at a time when resource adequacy remains a high priority.

TIEC supported the commission's revision to update the Peaking Operating Cost to use the natural gas price index value determined by ERCOT rather than the Houston Ship Channel. TIEC opined that this would better reflect actual costs and increase the calculation of Peaker Net Margin revenues.

Commission Response

The commission makes no changes to subsection (g)(2) as proposed. The commission agrees with STEC that the current heat rate multiplier reflects the existing natural gas fleet in ERCOT, which is appropriate when calculating a proxy for generator revenues.

Subsection (g)(3) (Proposed Subsection (f)(3))

The ERCOT Steel Mills suggested adding language to ensure that the real-time energy price definition includes ORDC revenues. The ERCOT Steel Mills stated that the real-time price of energy is a component of the Peaker Net Margin, and the ORDC mechanism was not in place when the Peaker Net Margin was originally adopted. The ERCOT Steel Mills noted that the ORDC contributes significantly to peaker revenue, and should be considered in the Peaker Net Margin calculation.

Commission Response

The commission notes that the ORDC adder is already included in real-time energy prices to calculate the Peaker Net Margin. The commission determines that no further clarification is warranted at this time.

Subsection (g)(4) (Proposed Subsection (f)(4))

The REP Group noted that there is a concern as to whether the Peaker Net Margin calculation should also include day-ahead market prices and ancillary services. The REP Group argued that consumers were exposed to higher prices in 2018 because of high day-ahead prices, even when the real-time prices remained low. Additionally, the REP Group observed that the CONE calculation is based on combined-cycle base load units that may not be the next technology that will be built.

In reply comments, TIEC asserted that forward bilateral contracts are likely the greatest contributor to generator profits. As a result, TIEC argued that the Peaker Net Margin is not a useful metric for determining whether the market is providing sufficient financial incentive for new entry. If the commission retains the Peaker Net Margin, TIEC agreed with the REP Group that day-ahead and ancillary services revenues should be included in the calculation to provide better insight into generator earnings.

In reply comments, STEC disagreed with the REP Group's recommendation to include day-ahead market prices and ancillary service revenues in the Peaker Net Margin calculation. STEC stated that this would make the Peaker Net Margin threshold more likely to be reached in times of high prices that would signal a functioning market with little to no reserves. STEC argued that the Peaker Net Margin and the LCAP are designed to be stop-gap mechanisms, rather than price ceilings. STEC recommended that the commission maintain the current calculation methodology for the Peaker Net Margin.

Commission Response

The commission declines to include day-ahead market prices or ancillary services revenues in the Peaker Net Margin calculation. These metrics do not reflect the goal of the Peaker Net Margin, which is to calculate revenues that a peaking unit would receive. The Peaker Net Margin threshold is intended to be a high barrier to ensure that generators have sufficiently recovered revenues before the LCAP is imposed.

Subsection (g)(6)(A) (Proposed Subsection (f)(6)(A))

TCPA stated that, should the commission retain the LCAP, the LCAP should be set at a value that would continue to send a scarcity pricing signal. TCPA suggested a value of \$4,500 per MWh. This level would represent a 50% reduction from the High System-Wide Offer Cap as opposed to an 80% reduction with the current value. In reply comments, Invernergy agreed that increasing the LCAP to \$4,500 per MWh would better balance the need to send a sufficient scarcity signal to promote investment while protecting unhedged load from sustained high prices. TCPA also suggested codifying the current VOLL in the rule. STEC recommended that the commission consider increasing the value of the LCAP based on current and projected market conditions, and that the commission re-evaluate the LCAP value at the same time it reevaluates the VOLL or the system-wide offer cap in Project No. 48540, *Review of Real-Time Co-optimization in the ERCOT Market*.

Commission Response

The commission declines to increase the LCAP at this time. The commission adopted the current LCAP value at the same time as the current High System-Wide Offer Cap of \$9,000 per MWh, and has historically raised the LCAP only in tandem with the increases to the High System-Wide Offer Cap. The commission is not revising the High System-Wide Offer Cap in this project, and the commission is not persuaded that a change to the LCAP is necessary at this time. The commission will consider the VOLL in Project No. 48540. The commission makes no changes to this portion of the rule as proposed.

Subsection (g)(6)(C)

Instead of the "3X" CONE threshold that forms the Peaker Net Margin, the ERCOT Steel Mills supported an ORDC "circuit breaker," which would be designed in the form of an annual fixed dollar cap on cumulative payments. The ERCOT Steel Mills stated that "3X" CONE is excessively high, given that "1X" CONE can generate sufficient generator revenues. The ERCOT Steel Mills argued that a CONE-based trigger is inappropriate as it focuses solely on generator revenues, does not consider negative consumer price impacts attributable to the ORDC, and is not transparent.

The ERCOT Steel Mills proposed that a fixed-dollar cap on cumulative payments be used instead to account for both incentivizing new market entry and the economic impact of the ORDC on consumers. The ERCOT Steel Mills opined that the implementation of the recent ORDC directives in Project No. 48551, *Review of Summer 2018 ERCOT Market Performance*, could result in higher prices that would have a negative impact on consumers in the ERCOT market and the Texas economy. The ERCOT Steel Mills stated that the impact of the ORDC changes made in that project should be monitored to avoid an excessively negative or distorting impact on competitive market pricing. The ERCOT Steel Mills proposed language to state that, if the ORDC and the reliability deployment price adder generate a certain amount of generator revenue in a calendar year, ERCOT will cease to apply those adders for the remainder of the year.

In reply comments, TIEC argued that "3X" CONE would be an extraordinary wealth transfer from consumers to generators, and "2X" CONE would be a more reasonable threshold. TIEC stated in reply comments that the LCAP has never been triggered, but given the recent changes to increase ORDC revenues, it would be appropriate to implement a more conservative threshold to prevent unintended consequences.

TIEC stated that the CONE is far above the actual cost of new build, is an overly conservative estimate of earnings necessary to incentivize new entry, and is unrealistic in its limitation on real-time market revenues. TIEC noted that generation has continued to be developed in ERCOT despite the Peaker Net Margin calculation never even reaching the half-way point to the "3X" CONE threshold. TIEC agreed with the ERCOT Steel Mills that "3X" CONE is excessive and would allow for dramatic wealth transfers before consumers are protected from excessively high prices. TIEC shared concerns that the LCAP may not properly incentivize market performance, but argued that, at the Peaker Net Margin of "3X" CONE, the market would have limited ability to respond to high prices. TIEC believed it would be prudent to lower the LCAP threshold to "2X" CONE.

In reply comments, the REP Group supported lowering the system-wide offer cap if the Peaker Net Margin exceeds "3X" CONE.

Commission Response

The commission notes that the Peaker Net Margin threshold calculation includes the revenues generated by the ORDC. The commission determines that maintaining the "3X" CONE threshold ensures that generators are able to sufficiently recover costs and have proper incentives to continue to provide generation in the market, ensuring a continued availability of generation that is low-cost in the many intervals of the year in which resources are not scarce. This approach also ensures that demand response programs and facilities continue to develop in anticipation of those dynamics.

Subsection (g)(6)(D) and (g)(6)(E) (Proposed Subsection (f)(6)(D) and Subsection (f)(6)(E))

ERCOT stated that, if the LCAP is modified to operate not simply as a cap on offers, but as a cap on energy prices as proposed, then ERCOT would incur some expense to modify the Security-Constrained Economic Dispatch (SCED) engine. ERCOT explained that prices in the ERCOT market are a function not only of the marginal price of energy needed to meet system demand, but also of the price of congestion.

ERCOT noted that it was unclear whether the proposed amendments' reference to a prohibition on an administrative pricing mechanism would apply to the power-balance penalty curve, maximum shadow prices for transmission constraint violations, or the use of proxy energy offer curves for generators that have not submitted complete offers. ERCOT stated that, if these items were to be included as administrative pricing mechanisms, then deactivating these features would likely be costly as it would require changes to the SCED optimization engine. ERCOT offered alternative language if it is the commission's intention to eliminate the operation of price adders, such as the ORDC and the reliability deployment price adder after the LCAP is imposed. Similarly, TCPA asserted that the commission should strike the proposed language that states that "energy prices will not exceed the LCAP," noting that the shadow price cap and shift factors in congestion management can cause prices to exceed the system-wide offer cap. TCPA suggested that, if the commission retains the LCAP, the rule should limit offers so that these elements can be included without exceeding the LCAP. In reply comments, STEC agreed with TCPA's suggestions to avoid rule amendments that would implicate many market features and necessitate changes to SCED, especially given that Peaker Net Margin has never been reached. In reply comments, TEC agreed with ERCOT's edits to accommodate pricing outcomes related to the Power Balance Penalty Curve, and recommended that the commission not specify market design elements, such as the ORDC or the reliability deployment price adder in the rule at this time.

TCPA and Invenergy stated that the reliability deployment price adder should continue if the LCAP is triggered. TCPA and Invenergy asserted that the reliability deployment price adder is not a scarcity pricing mechanism, but rather a correction of the price suppression associated with out-of-market reliability deployments, which may or may not occur during scarcity conditions.

STEC, TCPA, and TEC suggested retaining both the LCAP and the ORDC and setting the VOLL equal to the LCAP when the Peaker Net Margin threshold is triggered. TEC asserted this would allow prices to continue to be set by the ORDC during scarcity, while protecting consumers from potentially extreme costs. TEC stated that this would allow day-ahead offers to be limited to the LCAP while permitting real-time prices to rise to the VOLL as defined by the ORDC. TEC noted that the commission

does not need to prescribe rule language specifying the VOLL, but could describe the VOLL amount in the preamble of the Proposal for Adoption. TEC explained that the LCAP, which predates the ORDC, reflects the old paradigm in which high offers generally drove revenue expectations over time. TEC opined that, with the implementation of the ORDC mechanism, revenue outcomes during scarcity became decoupled from high generator offers. TEC asserted that removing the ORDC when the LCAP is in effect would revert back to a legacy approach. Additionally, TEC suggested removing specific references to the ORDC or any other administrative pricing mechanism to allow greater flexibility to the commission and ERCOT as market dynamics change over time. In reply comments, TEC agreed with TCPA and Invernergy that the ORDC provides critical pricing signals that are needed to appropriately value the reliability contribution of operating reserves. TEC concluded that retaining the LCAP and the ORDC with a reduced VOLL would shield load from excessive costs.

Invernergy stated that, with low reserve margins, the price adders are necessary to preserve system reliability. Invernergy opined that suspending the adders when the LCAP is imposed would send an inconsistent long-term pricing signal to the market by reducing revenues necessary to attract investment. Similarly, TCPA stated that the ORDC should be retained to provide scarcity pricing signals. In reply comments, STEC opined that suspending the ORDC when the LCAP is in effect could send an incorrect signal to decommit resources, rather than encouraging sustained commitment of those resources. STEC noted that it is possible that the Peaker Net Margin could be reached, given the changing generation portfolio in ERCOT and current reserve margins, and that imposing the LCAP and eliminating ORDC could overcorrect for instances of high prices and eliminate the sustained price signals for new generation. In reply comments, Invernergy agreed with STEC's comments, stating that price adder signals are increasingly necessary to relieve real-time resource capacity shortages and preserve system reliability.

The REP Group agreed that the ORDC could be continued if the LCAP were in place, if the VOLL were equal to the LCAP when the LCAP is effective. The REP Group remarked that such a mechanism may increase the Revenue Neutrality Allocation uplift to load, and recommended that the Independent Market Monitor, the commission, and stakeholders consider the effects of such action on Revenue Neutrality Allocation or other potential market impacts.

TIEC supported suspension of the ORDC, the reliability deployment price adder, and perhaps other administrative pricing adders, such as the proxy energy curves and the Power Balance Penalty Curve when the LCAP is triggered. TIEC pointed out that while these features are important, the interests of customers supports suspending administrative scarcity pricing mechanisms. If the commission were to adopt amendments that instead applied the ORDC in the event that the LCAP was imposed, then TIEC recommended setting VOLL equal to the LCAP to resolve the concern of divergence between the day-ahead and real-time markets.

TIEC observed that the commission has established a number of administrative changes to target a reserve margin higher than economically optimal that should be removed once LCAP has been applied. TIEC recommended that the commission modify the Minimum Contingency Level of the ORDC to reflect the level of reserves where actual firm load shed occurs, which is about 1,000 to 1,200 MW. TIEC also recommended that the commis-

sion eliminate any artificial standard deviation shifts and apply an ORDC curve that is based on actual and mean volatility of reserves across peak hours in the summer.

Commission Response

The commission agrees with the commenters that argued that retaining the ORDC and reliability deployment price adders continue to have value after the Peaker Net Margin threshold is reached. As a result, the VOLL should be set equal to the system-wide offer cap that is then in effect. The commission modifies the rule accordingly. This approach ensures market consistency by continuing to apply the ORDC and reliability deployment price adders even after the LCAP is imposed and is intended to reduce the time and cost to implement the changes that may result from this proceeding. Specifically, the rule is amended to state that the VOLL will equal the currently effective system-wide offer cap and that, when the LCAP is imposed, energy prices, exclusive of congestion prices, will not exceed the LCAP plus \$1 for the remainder of the calendar year. This change will ensure that all of the mechanisms in place in the current ERCOT market are preserved, and help protect loads while keeping the overall fundamentals of the energy-only market in place. The commission also notes that it does not intend for elements such as the shadow price caps or the Power Balance Penalty Curve to be suspended with the imposition of the LCAP.

The commission also deletes the references to the Independent Market Monitor in subsection (g)(6)(E). The commission's rules encompass a review of the scarcity pricing mechanism in its requirement that the Independent Market Monitor evaluate the operations of the wholesale market in §25.365(c)(2).

Subsection (h) (Proposed Subsection (g))

LCRA recommended adding language to instruct ERCOT to use the stakeholder process to develop rules that "implement and" comply with the section.

Commission Response

The commission adopts LCRA's proposed change with modifications. The change will provide more clarity to the rule.

Proposed Repeal of §25.508

Invernergy supported the proposed repeal of §25.508, and LCRA stated it had no objection to the proposed repeal of §25.508. No party filed comments opposing the repeal of §25.508.

Commission Response

The commission repeals §25.508 as proposed.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

16 TAC §25.505

The amendment is adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced

electricity, and gives the commission the authority to adopt and enforce rules to carry out these provisions; and §39.151, which grants the commission oversight and review authority over independent organizations such as ERCOT, directs the commission to adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, and authorizes the commission to delegate to an independent organization such as ERCOT responsibilities for establishing or enforcing such rules.

Cross reference to statutes: PURA §§14.002, 39.101, and 39.151.

§25.505. *Reporting Requirements and the Scarcity Pricing Mechanism in the Electric Reliability Council of Texas Power Region.*

(a) General. The purpose of this section is to prescribe reporting requirements for the Electric Reliability Council of Texas (ERCOT) and market participants, and to establish a scarcity pricing mechanism for the ERCOT market.

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

(1) Generation entity -- an entity that owns or controls a generation resource.

(2) Load entity -- an entity that owns or controls a load resource. A load resource is a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.

(3) Resource entity -- an entity that is a generation entity or a load entity.

(c) Resource adequacy reports. ERCOT must publish a resource adequacy report by December 31 of each year that projects, for at least the next five years, the capability of existing and planned electric generation resources and load resources to reliably meet the projected system demand in the ERCOT power region. ERCOT may publish other resource adequacy reports or forecasts as it deems appropriate. ERCOT must prescribe requirements for generation entities and transmission service providers (TSPs) to report their plans for adding new facilities, upgrading existing facilities, and mothballing or retiring existing facilities. ERCOT also must prescribe requirements for load entities to report their plans for adding new load resources or retiring existing load resources.

(d) Daily assessment of system adequacy. Each day, ERCOT must publish a report that includes the following information for each hour for the seven days beginning with the day the report is published:

(1) System-wide load forecast; and

(2) Aggregated information on the availability of resources, by ERCOT load zone, including load resources.

(e) Filing of resource and transmission information with ERCOT. ERCOT must prescribe reporting requirements for resource entities and TSPs for the preparation of the assessment required by subsection (d) of this section. At a minimum, the following information must be reported to ERCOT:

(1) TSPs will provide ERCOT with information on planned and existing transmission outages.

(2) Generation entities will provide ERCOT with information on planned and existing generation outages.

(3) Load entities will provide ERCOT with information on planned and existing availability of load resources, specified by type of ancillary service.

(4) Generation entities will provide ERCOT with a complete list of generation resource availability and performance capabilities, including, but not limited to:

(A) the net dependable capability of generation resources;

(B) projected output of non-dispatchable resources such as wind turbines, run-of-the-river hydro, and solar power; and

(C) output limitations on generation resources that result from fuel or environmental restrictions.

(5) Load serving entities (LSEs) will provide ERCOT with complete information on load response capabilities that are self-arranged or pursuant to bilateral agreements between LSEs and their customers.

(f) Publication of resource and load information in ERCOT markets. To increase the transparency of the ERCOT-administered markets, ERCOT must post the information required in this subsection at a publicly accessible location on its website. In no event will ERCOT disclose competitively sensitive consumption data. The information released must be made available to all market participants.

(1) ERCOT will post the following information in aggregated form, for each settlement interval and for each area where available, two calendar days after the day for which the information is accumulated:

(A) Quantities and prices of offers for energy and each type of ancillary capacity service, in the form of supply curves;

(B) Self-arranged energy and ancillary capacity services, for each type of service;

(C) Actual resource output;

(D) Load and resource output for all entities that dynamically schedule their resources;

(E) Actual load; and

(F) Energy bid curves, cleared energy bids, and cleared load.

(2) ERCOT will post the following information in entity-specific form, for each settlement interval, 60 calendar days after the day for which the information is accumulated, except where inapplicable or otherwise prescribed. Resource-specific offer information must be linked to the name of the resource (or identified as a virtual offer), the name of the entity submitting the information, and the name of the entity controlling the resource. If there are multiple offers for the resource, ERCOT must post the specified information for each offer for the resource, including the name of the entity submitting the offer and the name of the entity controlling the resource. ERCOT will use §25.502(d) of this title (relating to Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas) to determine the control of a resource and must include this information in its market operations data system.

(A) Offer curves (prices and quantities) for each type of ancillary service and for energy in the real time market, except that, for the highest-priced offer selected or dispatched for each interval on an ERCOT-wide basis, ERCOT will post the offer price and the name of the entity submitting the offer three calendar days after the day for which the information is accumulated.

(B) If the clearing prices for energy or any ancillary service exceeds a calculated value that is equal to 50 times a natural gas price index selected by ERCOT for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour, during any interval, the portion of every market participant's price-quantity offer pairs for balancing energy service and each other ancillary service that is at or above a calculated value that is equal to 50 times a natural gas price index selected by ERCOT for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour, for that service and that interval must be posted seven calendar days after the day for which the offer is submitted.

(C) Other resource-specific information, as well as self-arranged energy and ancillary capacity services, and actual resource output, for each type of service and for each resource at each settlement point;

(D) The load and generation resource output, for each entity that dynamically schedules its resources; and

(E) For each hour, transmission flows, voltages, transformer flows, voltages and tap positions (i.e., State Estimator data). Notwithstanding the provisions of this subparagraph and the provisions of subparagraphs (A) through (D) of this paragraph, ERCOT must release relevant State Estimator data earlier than 60 days after the day for which the information is accumulated if, in its sole discretion, it determines the release is necessary to provide a complete and timely explanation and analysis of unexpected market operations and results or system events, including but not limited to pricing anomalies, recurring transmission congestion, and system disturbances. ERCOT's release of data in this event must be limited to intervals associated with the unexpected market or system event as determined by ERCOT. The data released must be made available simultaneously to all market participants.

(g) Scarcity pricing mechanism (SPM). ERCOT will administer the SPM. The SPM will operate as follows:

(1) The SPM will operate on a calendar year basis.

(2) For each day, the peaking operating cost (POC) will be 10 times the natural gas price index value determined by ERCOT. The POC is calculated in dollars per megawatt-hour (MWh).

(3) For the purpose of this section, the real-time energy price (RTEP) will be measured as an average system-wide price as determined by ERCOT.

(4) Beginning January 1 of each calendar year, the peaker net margin will be calculated as: $\Sigma((RTEP - POC) * (\text{number of minutes in a settlement interval} / 60 \text{ minutes per hour}))$ for each settlement interval when $RTEP - POC > 0$.

(5) Each day, ERCOT will post at a publicly accessible location on its website the updated value of the peaker net margin, in dollars per megawatt (MW).

(6) System-Wide Offer Caps.

(A) The low system-wide offer cap (LCAP) will be set on a daily basis at the greater of:

(i) \$2,000 per MWh and \$2,000 per MW per hour;

or
(ii) 50 times the natural gas price index value determined by ERCOT, expressed in dollars per MWh and dollars per MW per hour.

(B) The high system-wide offer cap (HCAP) will be \$9,000 per MWh and \$9,000 per MW per hour.

(C) The system-wide offer cap will be set equal to the HCAP at the beginning of each calendar year and maintained at this level until the peaker net margin during a calendar year exceeds a threshold of three times the cost of new entry of new generation plants.

(D) If the peaker net margin exceeds the threshold established in subparagraph (C) of this paragraph during a calendar year, the system-wide offer cap will be set to the LCAP for the remainder of that calendar year. In this event, ERCOT will continue to apply the operating reserve demand curve and the reliability deployment price adder for the remainder of that calendar year. Energy prices, exclusive of congestion prices, will not exceed the LCAP plus \$1 for the remainder of that calendar year.

(E) The value of the lost load will be equal to the value of the system-wide offer cap in effect.

(h) Development and implementation. ERCOT must use a stakeholder process to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

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 May 10, 2019.

TRD-201901385

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Effective date: May 30, 2019

Proposal publication date: January 11, 2019

For further information, please call: (512) 936-7244



16 TAC §25.508

The repeal is adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced electricity, and gives the commission the authority to adopt and enforce rules to carry out these provisions; and §39.151, which grants the commission oversight and review authority over independent organizations such as ERCOT, directs the commission to adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, and authorizes the commission to delegate to an independent organization such as ERCOT responsibilities for establishing or enforcing such rules.

Cross reference to statutes: PURA §§14.002, 39.101, and 39.151.

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 May 10, 2019.

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Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 30, 2019
Proposal publication date: January 11, 2019
For further information, please call: (512) 936-7244



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

DIVISION 4. PERFORMANCE STANDARDS

19 TAC §101.3041

The Texas Education Agency adopts an amendment to §101.3041, concerning performance standards. The amendment is adopted without changes to the proposed text as published in the March 22, 2019 issue of the *Texas Register* (44 TexReg 1499) and will not be republished. The adopted amendment deletes language regarding Texas Assessment of Knowledge and Skills (TAKS) performance standards since Senate Bill (SB) 463 and SB 1005, 85th Texas Legislature, Regular Session, 2017, no longer require this assessment to be administered.

REASONED JUSTIFICATION. Section 101.3041 establishes the level of performance considered to be satisfactory on state-developed assessments, as required by Texas Education Code, Chapter 39, Subchapter B, for all grades, assessments, and subjects.

The amendment to §101.3041 deletes subsection (d) and the corresponding figure, which reference TAKS performance standards. With the implementation of SB 463 and SB 1005, 85th Texas Legislature, Regular Session, 2017, TAKS is no longer being administered. As such, performance standards for this assessment program are no longer required. Previous assessment results for TAKS can be obtained through the assessment vendor, if needed. Students who were first enrolled in Grade 9 prior to the 2011-2012 school year or enrolled in Grade 10 or above in the 2011-2012 school year who had TAKS as a graduation requirement have other options for satisfying graduation requirements as detailed in 19 TAC §74.1027, Diplomas for Certain Individuals Who Entered Grade 9 Before 2011-2012 School Year, and 19 TAC §101.4003, Texas Assessment of Knowledge and Skills Exit-Level Alternate Assessments.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began March 22, 2019, and ended April 22, 2019. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.0241(a), which requires the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments; and TEC, §39.025(f-1), which requires the commissioner to establish satisfactory performance levels on alternate assessments to sat-

isfy graduation requirements for students who entered Grade 9 prior to the 2011-2012 school year or Grade 10 or above in the 2011-2012 school year. The commissioner is not required after September 1, 2017, to maintain and administer the Texas Assessment of Knowledge and Skills.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.0241(a) and §39.025(f-1).

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 May 9, 2019.

TRD-201901383
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: May 29, 2019
Proposal publication date: March 22, 2019
For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 533. PRACTICE AND PROCEDURE SUBCHAPTER B. GENERAL PROVISIONS RELATING TO PRACTICE AND PROCEDURE

22 TAC §533.8

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §533.8, Motions for Rehearing, in Chapter 533, Practice and Procedure, in Subchapter B, General Provisions Relating to Practice and Procedure, with changes to the proposed text, as published in the March 1, 2019, issue of the *Texas Register* (44 TexReg 924) and will be republished. A non-substantive change was made to §533.8(e)(5) to remove redundant language.

The amendments are recommended by the Enforcement Committee to ensure parties in a contested case know how to file a motion for rehearing with the Commission.

The amendments to §533.8 clarify the methods for filing a motion for rehearing with the Commission by adding the email address and facsimile number to which a motion for rehearing may be sent.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

The revisions to the adopted rules do not change the nature or scope so much that they could be deemed different rules. The adopted rules do not affect individuals other than those contemplated by the rule as proposed. The adopted rules do not impose more onerous requirements than the proposed rules.

§533.8. *Motions for Rehearing.*

(a) The timely filing of a motion for rehearing is a prerequisite to appeal. The motion must be filed with the Commission by:

(1) delivering the motion in-person to the Commission's headquarters;

(2) sending the motion via email to administration@trec.texas.gov; or

(3) sending the motion via fax to (512) 936-3788, ATTN: TREC General Counsel.

(b) Motions for rehearing are controlled by the APA, §§2001.145 - 2001.147 and this section.

(c) A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error, such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Commission will take no action and the motion will be overruled by operation of law.

(d) The Commission delegates authority to hear and rule on motions for rehearing to the Commission's Enforcement Committee, consisting of three Commission members appointed by the Commission chair.

(e) Any party may request oral arguments before the Enforcement Committee prior to the final disposition of the motion for rehearing. If the Enforcement Committee grants a request for oral argument, oral arguments will be conducted in accordance with paragraphs (1) - (5) of this subsection.

(1) The chair of the Enforcement Committee or the member designated by the chair to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence, such as excerpts of the record before the presiding officer, may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the original hearing, or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting oral arguments, the party filing the motion will have the burden of proof and persuasion and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal, subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Enforcement Committee may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Enforcement Committee, and any discussion by the members of the Enforcement Committee, the presiding member shall call for a vote on the motion. A member of the Enforcement Committee need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the Enforcement Committee members are present and vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(f) A petition for judicial review must be filed in a District Court of Travis County Texas as provided by the APA. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.

(g) A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

(h) If, after judicial review, the administrative penalty is reduced or not assessed, the Executive Director shall remit to the person charged the appropriate amount, plus accrued interest if the administrative penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the Executive Director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed administrative penalty is paid to the Commission and ending on the date the administrative penalty is remitted.

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 May 8, 2019.

TRD-201901358

Kristen Worman

Deputy General Counsel

Texas Real Estate Commission

Effective date: May 28, 2019

Proposal publication date: March 1, 2019

For further information, please call: (512) 936-3093



CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.141, §535.142

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.141, Initiation of Investigation and new rule §535.142, Consumer Complaint Processing, in Chapter 535, General Provisions, in Subchapter N, Suspension and Revocation of Licensure, without changes to the proposed text, as published in the March 1, 2019, issue of the *Texas Register* (44 TexReg 925) and will not be republished.

The amendments to §535.141, Initiation of Investigation, and new rule §535.142, Consumer Complaint Processing, are recommended by the Enforcement Committee to implement recommendations from the Texas Sunset Commission regarding the development of standard rules and procedures for handling each

phase of the complaint process. As recommended by the Sunset Commission, the amendments and new rule summarize the Commission's existing procedures for handling consumer complaints and provide transparency to license holders and members of the public.

The amendments to §535.141 change the caption of this section to clarify that this section also includes order requirements. The amendments also add language to this section to clarify how the agency prioritizes complaint investigations as required in Tex. Occ. Code §1101.204. The amendments remove existing language from subsection (b), since that language is included in new rule §535.142, and correct a typographical error by inserting a missing period to the end of subsection (f).

New rule §535.142 specifies the steps followed by the Commission when processing and investigating consumer complaints. This new section also includes the language from §535.161 in this Chapter, which is being repealed.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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 May 8, 2019.

TRD-201901359

Kristen Worman

Deputy General Counsel

Texas Real Estate Commission

Effective date: May 28, 2019

Proposal publication date: March 1, 2019

For further information, please call: (512) 936-3093



22 TAC §535.161

The Texas Real Estate Commission (TREC) adopts the repeal of 22 TAC §535.161, Failing to Provide Information, in Chapter 535, General Provisions, in Subchapter N, Suspension and Revocation of Licensure, without changes to the proposed text, as published in the March 1, 2019, issue of the *Texas Register* (44 TexReg 926) and will not be republished.

This repeal is recommended by the Enforcement Committee because the language for this section is being moved to new section, 22 TAC §535.142, Consumer Complaint Processing, and this section is not referenced in any other section in this Chapter.

No comments were received regarding repeal of this section.

The repeal is adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

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 May 8, 2019.

TRD-201901363

Kristen Worman

Deputy General Counsel

Texas Real Estate Commission

Effective date: May 28, 2019

Proposal publication date: March 1, 2019

For further information, please call: (512) 936-3093



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES **SUBCHAPTER C. PROGRAM SERVICES** **DIVISION 1. BASIC SERVICES**

37 TAC §380.9105

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §380.9105, concerning Clothing, Bedding, Hygiene, and Hairstyles, without changes to the proposed text as published in the March 1, 2019, issue of the *Texas Register* (44 TexReg 927) and will not be republished.

JUSTIFICATION FOR REPEAL

The public benefit anticipated as a result of the repeal is the elimination of an unnecessary agency rule, the subject matter of which is more appropriately addressed in internal manuals.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed repeal.

STATUTORY AUTHORITY

The repeal is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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 May 10, 2019.

TRD-201901395

Christian von Wupperfeld

General Counsel

Texas Juvenile Justice Department

Effective date: June 1, 2019

Proposal publication date: March 1, 2019

For further information, please call: (512) 490-7278



DIVISION 2. EDUCATION PROGRAMS

37 TAC §380.9155

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.9155, concerning Participation and Reporting Requirements of the Reading Improvement Program and Positive Behavior Support System, without changes to the proposed text as published in the March 1, 2019, issue of the *Texas Register* (44 TexReg 929) and will not be republished.

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the section is to provide TJJD the flexibility to better manage the education of the youth in its care and to provide flexibility in releasing appropriate youth to parole when certain educational programming can be provided through reentry services.

SUMMARY OF CHANGES

The amended rule modifies the criteria used to determine whether a youth has sufficiently participated in the reading improvement program. Specifically, youth attendance during reading instructional periods is no longer a possible factor in this determination.

The amended rule also modifies the criteria used to determine whether a youth has sufficiently participated in the positive behavior support system. Specifically, the following are no longer possible factors in this determination: 1) number of days the youth was removed from the designated education location for disciplinary reasons; 2) refusals to attend class; 3) number of available instructional minutes missed due to removal for a disciplinary reason or refusal to attend class; and 4) pattern of increased time spent in class.

Additionally, the amended rule replaces the term *Positive Behavioral Interventions and Supports (PBIS) system* with the term *positive behavior support system*. The latter term is used in Education Code §30.106 and allows TJJD to use positive behavior support systems other than solely PBIS.

In the section of the rule that addresses evaluating the effectiveness of the positive behavior support system, the amended rule adds the following items as components of TJJD's system for evaluation: 1) a validated measurement of systemic positive behavioral support interventions; and 2) the number of minutes

students are out of the regular classroom because of disciplinary reasons.

Additional changes to the rule include: 1) clarifying that students *receiving* (rather than students *eligible for*) special education services and English as a Second Language services are among the subgroups included in the analysis of school-related disciplinary actions; 2) removing definitions of terms that are no longer used in the rule; and 3) removing a clause that applied only to youth committed to one of TJJD's predecessor agencies before September 1, 2010.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rule-making action.

STATUTORY AUTHORITY

The amended section is adopted under: Section 242.003, Human Resources Code, which requires TJJD to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs; and Section 30.106, Education Code, which requires TJJD to adopt rules to define youth participation requirements and to define certain program-evaluation criteria relating to the reading improvement program and positive behavior support system.

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 May 10, 2019.

TRD-201901397

Christian von Wupperfeld

General Counsel

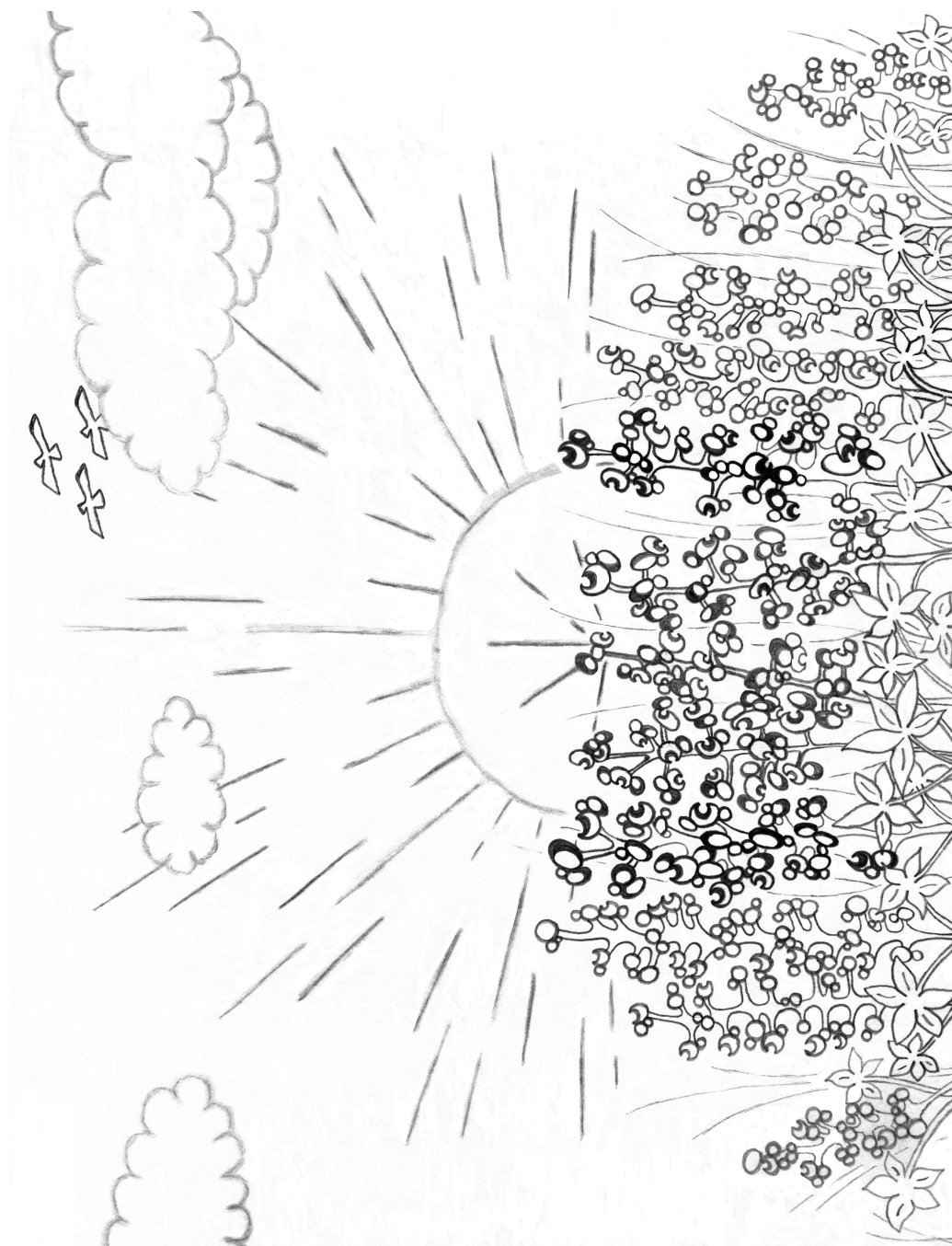
Texas Juvenile Justice Department

Effective date: June 1, 2019

Proposal publication date: March 1, 2019

For further information, please call: (512) 490-7278





TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Department of Family and Protective Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of Family and Protective Services (DFPS) transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201, §531.02011 and §531.02013. The DFPS rules in Texas Administrative Code, Title 40, Part 19, Chapter 711, Investigations of Individuals Receiving Services from Certain Providers that are related to these transferred functions are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 711, Investigations of Individuals Receiving Services from Certain Providers. All rules in Chapter 711 are transferring except for Subchapter O, Employee Misconduct Registry, which will remain in Title 40, Part 19, Chapter 711.

The rules will be transferred in the Texas Administrative Code effective June 15, 2019.

The following conversion chart outlines the rule transfer:

Figure: 40 TAC Chapter 711

TRD-201901402

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of Family and Protective Services (DFPS) transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201, §531.02011 and §531.02013. The DFPS rules in Texas Administrative Code, Title 40, Part 19, Chapter 711, Investigations of Individuals Receiving Services from Certain Providers that are related to these transferred functions are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 711, Investigations of Individuals Receiving Services from Certain Providers. All rules in Chapter 711 are transferring except for Subchapter O, Employee Misconduct Registry, which will remain in Title 40, Part 19, Chapter 711.

The rules will be transferred in the Texas Administrative Code effective June 15, 2019.

The following conversion chart outlines the rule transfer:

Figure: 40 TAC Chapter 711

TRD-201901403

Figure: 40 TAC Chapter 711

Current Rules Title 40. Social Services and Assistance Part 19. Department of Family and Protective Services Chapter 711. Investigations of Individuals Receiving Services from Certain Providers	Move to Title 26. Health and Human Services Part 1. Texas Health and Human Services Commission Chapter 711. Investigations of Individuals Receiving Services from Certain Providers
Subchapter A. Introduction	Subchapter A. Introduction
§711.1. What is the purpose of this chapter?	§711.1. What is the purpose of this chapter?
§711.3. How are the terms in this chapter defined?	§711.3. How are the terms in this chapter defined?
§711.5. What does APS investigate under this chapter?	§711.5. What does PI investigate under this chapter?
§711.7. What does APS not investigate under this chapter?	§711.7. What does PI not investigate under this chapter?
§711.11. How is physical abuse defined?	§711.11. How is physical abuse defined?
§711.13. How is sexual abuse defined?	§711.13. How is sexual abuse defined?
§711.17. How is verbal/emotional abuse defined?	§711.17. How is verbal/emotional abuse defined?
§711.19. How is neglect defined?	§711.19. How is neglect defined?
§711.21. How is exploitation defined?	§711.21. How is exploitation defined?
§711.23. What is not considered abuse, neglect, or exploitation?	§711.23. What is not considered abuse, neglect, or exploitation?
Subchapter C. Duty to Report	Subchapter C. Duty to Report
§711.201. What is your duty to report if you are a direct provider or service provider?	§711.201. What is your duty to report if you are a direct provider or service provider?
Subchapter E. Conducting the Investigation	Subchapter E. Conducting the Investigation
§711.401. When does the Investigator notify law enforcement and OIG for allegations of abuse, neglect, or exploitation and when is the identity of the reporter revealed?	§711.401. When does the Investigator notify law enforcement and OIG for allegations of abuse, neglect, or exploitation and when is the identity of the reporter revealed?
§711.402. What provider and Health and Human Services agency does the Investigator notify for allegations of abuse, neglect, or exploitation and when is the identity of the reporter revealed?	§711.402. What provider and Health and Human Services agency does the Investigator notify for allegations of abuse, neglect, or exploitation and when is the identity of the reporter revealed?
§711.403. Who and when does the investigator notify upon receiving an allegation that relates to a general complaint?	§711.403. Who and when does the investigator notify upon receiving an allegation that relates to a general complaint?
§711.405. What action does the investigator take if the alleged perpetrator is a licensed professional?	§711.405. What action does the investigator take if the alleged perpetrator is a licensed professional?
§711.413. How are investigations prioritized?	§711.413. How are investigations prioritized?

§711.415. What are the requirements for face-to-face contact with the alleged victim?	§711.415. What are the requirements for face-to-face contact with the alleged victim?
§711.417. When must the investigator complete the investigation?	§711.417. When must the investigator complete the investigation?
§711.419. What if the investigator cannot complete the investigation on time?	§711.419. What if the investigator cannot complete the investigation on time?
§711.421. What are the possible findings of an investigation?	§711.421. What are the possible findings of an investigation?
§711.423. Is the investigator required to designate a perpetrator or alleged perpetrator?	§711.423. Is the investigator required to designate a perpetrator or alleged perpetrator?
Subchapter I. Provision of Services	Subchapter F. Provision of Services
§711.801. What action does the investigator take if an individual enrolled in the HCS waiver program receiving services from an HCS waiver program provider needs emergency services?	§711.551. What action does the investigator take if an individual enrolled in the HCS waiver program receiving services from an HCS waiver program provider needs emergency services?
§711.802. What action does the investigator take if an individual receiving services from a licensed ICF-IID needs emergency services?	§711.553. What action does the investigator take if an individual receiving services from a licensed ICF-IID needs emergency services?
§711.804. What action does the investigator take if an adult lives in a residence that is owned, operated, or controlled by an HCS waiver program provider but does not receive HCS waiver services and needs emergency services?	§711.555. What action does the investigator take if an adult lives in a residence that is owned, operated, or controlled by an HCS waiver program provider but does not receive HCS waiver services and needs emergency services?
§711.806. What action does the investigator take if a child lives in a residence that is owned, operated, or controlled by an HCS waiver program provider but does not receive HCS waiver services and needs emergency services?	§711.557. What action does the investigator take if a child lives in a residence that is owned, operated, or controlled by an HCS waiver program provider but does not receive HCS waiver services and needs emergency services?
Subchapter G. Release of Report and Findings	Subchapter G. Release of Report and Findings
§711.601. Are investigation documents confidential?	§711.601. Are investigation documents confidential?
§711.603. What is included in the investigative report?	§711.603. What is included in the investigative report?
§711.605. Who receives the investigative report?	§711.605. Who receives the investigative report?
§711.609. Is the reporter notified of the finding and the method to appeal, and if so, how?	§711.609. Is the reporter notified of the finding and the method to appeal, and if so, how?
§711.611. Is the victim or alleged victim, guardian, or parent notified of the finding and the method to appeal, and if so, how?	§711.611. Is the victim or alleged victim, guardian, or parent notified of the finding and the method to appeal, and if so, how?

§711.613. Can the investigative report be released by a service provider?	§711.613. Can the investigative report be released by a service provider?
Subchapter J. Appealing the Investigation Finding	Subchapter J. Appealing the Investigation Finding
§711.901. What is an appeal of the investigation?	§711.901. What is an appeal of the investigation?
§711.903. How is an appeal affected by a determination that the perpetrator's confirmed act of abuse, neglect, or exploitation may rise to the level of reportable conduct?	§711.903. How is an appeal affected by a determination that the perpetrator's confirmed act of abuse, neglect, or exploitation may rise to the level of reportable conduct?
§711.905. Who may request an appeal of the investigation?	§711.905. Who may request an appeal of the investigation?
§711.907. How does a qualified party request an appeal?	§711.907. How does a qualified party request an appeal?
§711.909. What is the timeline for requesting an appeal?	§711.909. What is the timeline for requesting an appeal?
§711.911. How and when is the appeal conducted?	§711.911. How and when is the appeal conducted?
§711.913. What if the administrator of a state-operated facility disagrees with the second level appeal decision?	§711.913. What if the administrator of a state-operated facility disagrees with the second level appeal decision?
§711.915. Is a finding ever changed without an appeal?	§711.915. Is a finding ever changed without an appeal?



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter.

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 111 continue to exist.

Comments regarding suggested changes to the rules in Chapter 111 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 111. Written comments may be submitted to Mrs. 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 2019-084-111-AI. Comments must be received by June 25, 2019. For further information, please contact Eddy Lin, Air Quality Division, at (512) 239-3932.

TRD-201901418

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 14, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 220, Regional Assessments of Water Quality.

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 com-

mission will assess whether the reasons for initially adopting the rules in Chapter 220 continue to exist.

Comments regarding suggested changes to the rules in Chapter 220 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 220. 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 2019-087-220-OW. Comments must be received by June 25, 2019. For further information, please contact Sarah Eagle, Water Quality Planning Division, at (512) 239-6329.

TRD-201901420

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 14, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 323, Waste Disposal Approvals.

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 323 continue to exist.

Comments regarding suggested changes to the rules in Chapter 323 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 323. 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 2019-032-323-OW. Comments must be received by June 25, 2019. For further information, please contact Laurie Fleet, Water Quality Division, at (512) 239-5445.

TRD-201901421

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 14, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 333, Brownfields Initiatives.

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 333 continue to exist.

Comments regarding suggested changes to the rules in Chapter 333 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 333. 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 2019-088-333-WS. Comments must be received by June 25, 2019. For further information, please contact Anna R. Brulloths, Remediation Division, at (512) 239-5052.

TRD-201901422

Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 14, 2019



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 344, Landscape Irrigation.

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 344 continue to exist.

Comments regarding suggested changes to the rules in Chapter 344 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 344. Written comments may be submitted to Mrs. 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 2019-072-344-CE. Comments must be received by June 23, 2019. For further information, please contact Mr. Al Fuentes, Project Manager, Program Support Section, at (512) 239-1407.

TRD-201901419

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 14, 2019



Adopted Rule Reviews

Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) has completed the review of Chapter 24, Substantive Rules Applicable to Water and Sewer Service Providers, as required by Texas Government Code §2001.039, Agency Review of Existing Rules, and as noticed in the October 26, 2018, issue of the *Texas Register* (43 TexReg 7224). The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.texas.gov. Project No. 48679 is assigned to this rule review project.

Texas Government Code §2001.039 requires that each state agency review and re-adopt, re-adopt with amendments, or repeal the rules adopted by that agency under Texas Government Code chapter 2001, subchapter B, Rulemaking. As required by Texas Government Code §2001.039(e), this review is to assess whether the reasons for adopting or re-adopting a rule continue to exist. The commission requested specific comments from interested persons on whether the reasons for adopting each section in Chapter 24 continue to exist. In addition, the commission welcomed comments on any modifications that would improve the rules.

The commission did not receive any comments on the notice of intention to review.

The commission has completed the review of 16 Texas Administrative Code Chapter 24 as required by Texas Government Code §2001.039. The commission finds that the reasons for adopting Chapter 24 continue to exist and re-adopts Chapter 24, Substantive Rules Applicable to Water and Sewer Service Providers, in its entirety, under the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (PURA), which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §14.052, which requires the commission to adopt and enforce rules governing practice and procedure before the commission; the Texas Water Code §13.041(b) (TWC), which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission; and Texas Government Code §2001.039, which requires each state agency to review and re-adopt its rules every four years.

Cross Reference to Statutes: PURA §14.002 and §14.052; TWC §13.041(b); and Texas Government Code §2001.039.

This agency hereby certifies that the rules in Chapter 24, as re-adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that Chapter 24, Substantive Rules Applicable to Water and Sewer Service Providers, is hereby re-adopted under Texas Government Code §2001.039 with no changes to this chapter.

TRD-201901384
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2019



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 3, Definitions, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8481).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 3 provide definitions for various terms that are used throughout the commission's rules. The rules are needed to ensure the regulated community, the public, and any other entity relying on the rules, understand the meaning of the terms as they are used in the other commission rules.

Public Comment

The public comment period closed on January 25, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 3 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201901396
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 10, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 10, Commission Meetings, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7686).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 10 are required because the rules implement provisions of Texas Water Code, Chapter 5, relating to the makeup of the commission and the authority of the commission to adopt any rules necessary to carry out its powers and duties under the laws of the state. The rules in Chapter 10 also implement Texas Government Code,

Chapter 551, the Texas Open Meetings Act, which sets requirements for open and closed sessions of governmental entities in the state of Texas.

Public Comment

The public comment period closed on December 28, 2018. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 10 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201901399
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 10, 2019



The Texas Commission on Environmental Quality (TCEQ or commission) has completed its Rule Review of 30 TAC Chapter 106, Permits by Rule, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7686).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons still exist. The rules in Chapter 106 are required because the permits by rule (PBR) codified in Chapter 106 make up a core component of TCEQ's air permitting strategy. The use of PBRs to authorize insignificant emission sources allows TCEQ to allocate new source review (NSR) permitting resources towards the review of more complex or significant sources of air pollution. The PBRs contained in Chapter 106 are used extensively by a wide range of facility types and industries, including, but not limited to, domestic and retail facilities and activities, coatings operations, metalworking and general industrial facilities, stationary engines and turbines, oil and gas production, chemical manufacturing, and petroleum refining. In recent years (2015 - 2017) the Air Permits Division has approved or issued an average of over 6,000 PBR registrations or notifications per year. Many additional facilities are authorized by PBRs which do not require registration or notification. If these PBRs had to be processed as full case-by-case NSR air permit applications, it would result in a dramatically increased burden on the regulated community and on the TCEQ.

Public Comment

The public comment period closed on January 10, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 106 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201901401
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 10, 2019



The Texas Commission on Environmental Quality (commission or TCEQ) has completed its Rule Review of 30 TAC Chapter 205, General Permits for Waste Discharges, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7686).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 205 are required to codify the authority for TCEQ to issue general permits (GPs) for discharges of stormwater and wastewater into or adjacent to water in the state from certain facilities and activities. The rules in Chapter 205 also provide the administrative procedures for issuing GPs and authorizations under GPs.

A GP is a simplified and streamlined method for authorizing wastewater and stormwater discharges in specific circumstances, as an alternative to resource-intensive site-specific individual permits. Under Texas Water Code, §26.040, the Texas Legislature provided TCEQ with the authority to issue general permits as a means of authorizing wastewater and stormwater discharges. The issuance of GPs is a core component of TCEQ's wastewater and stormwater permitting strategy. The use of GPs to authorize facilities with similar operations, discharges, and protective measures allows the commission to allocate finite permitting resources towards the review of more complex or unique sources of water pollution.

TCEQ has issued 13 GPs under Chapter 205 which authorize discharges from: construction stormwater, industrial stormwater, concentrated animal feeding operations, small municipal separate storm sewer systems, concrete batch plants, petroleum bulk storage tanks, aquaculture, livestock manure composting, quarries, facilities that use evaporation ponds, facilities that conduct hydrostatic testing, pesticide applications, and activities that generate petroleum contaminated water. In recent years (2013 - 2018) the Water Quality Division has processed an average of over 9,400 GP authorizations per year. This workload does not include the number of permittees that obtain authorization without submission of an application, which is allowed by five of the GPs. If Chapter 205 was eliminated, these applications would have to be processed as site specific individual permits which would result in a dramatically increased burden on the regulated community and on TCEQ.

Public Comment

The public comment period closed on January 4, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 205 continue to exist and re-adopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201901398

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 10, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 326, Medical Waste Management, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the November 9, 2018, issue of the *Texas Register* (43 TexReg 7474).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 326 are required because the rules implement the requirements of Texas Health and Safety Code, §361.0905, Regulation of Medical Waste. The rules cover aspects of medical waste management from medical waste facilities under the authority of the commission. The rules in Chapter 326 apply to any person involved in any aspect of the management and control of medical waste and medical waste facilities and activities including storage, collection, handling, transportation, and processing.

Public Comment

The public comment period closed on December 12, 2018. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 326 continue to exist and re-adopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201901400

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 10, 2019



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 37 TAC §439.19(b)

Examination	Section	Number of Exam Questions	Maximum Possible Number of Pilot Questions	Time Allowed
Basic Structure FP	Hazardous Materials Awareness	25		
	Hazardous Materials Operations	25		
	Firefighter I	100		
	Firefighter II	75		
	TOTAL	225	23	4.5 Hours
Basic Fire Inspector	Inspector I	50		
	Inspector II	50		
	TOTAL	100	10	2.0 Hours
Basic Structure FP/ Intermediate Wildland FP	Hazardous Materials Awareness	25		
	Hazardous Materials Operations	25		
	Firefighter I	100		
	Firefighter II	75		
	Intermediate Wildland FP	25		
	TOTAL	250	25	5.0 Hours
FOR ALL OTHER EXAMINATIONS, SECTIONAL EXAMINATIONS, AND RETESTS				
	Recommended Hours	Number of Exam Questions	Maximum Possible Number of Pilot Questions	Time Allowed
IF THE RECOMMENDED HOURS FOR THE CURRICULUM OR SECTION IS:	Less than 30	25	3	30 Minutes
	31 to 100	50	5	1.0 Hour
	101 to 200	75	8	1.5 Hours
	201 to 300	100	10	2.0 Hours
	301 to 400	125	13	2.5 Hours
	401 or More	150	15	3.0 Hours

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Request for Applications (RFA) for the Choose Life Grant Program

The Office of the Attorney General (OAG) is soliciting applications for projects that support the Choose Life Grant Program. The purpose of the OAG Choose Life Grant Program is to provide funds, using a competitive allocation method, as described in Chapter 402 of the Government Code.

Applicable Funding Source for Choose Life Grant Program:

The Choose Life Grant Program receives funding from a separate trust fund established by the Comptroller of Public Accounts outside the general revenue fund that the OAG is authorized to administer to make grants to an eligible organization. The Choose Life account is authorized by Chapter 504.662 of the Transportation Code, and Chapter 402.036 of the Government Code, and is funded by fees collected for the purchase of a Choose Life License Plate, as well as gifts, grants, donations and legislative appropriations. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: An Applicant Organization must be an eligible organization in this state to apply for the Choose Life Grant Program, meaning it must meet all of the following criteria:

An organization that provides services in this state and is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt charitable organization under Section 501(c)(3) of that code;

Provides counseling and material assistance to pregnant women who are considering placing their children for adoption;

Does not charge for services provided;

Does not provide abortions or abortion-related services or make referrals to abortion providers;

Is not affiliated with an organization that provides abortions or abortion-related services or makes referrals to abortion providers; and

Does not contract with an organization that provides abortions or abortion-related services or makes referrals to abortion providers.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the applica-

tion process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account: Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. If an on-line account is not created, the Applicant will be unable to apply for funding. To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

1. First Name
2. Last Name
3. Email Address
4. Organization Legal Name

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum grant request the OAG will consider is \$1,000. As of the date this Application Kit is published, the amount available in the Choose Life account to award is approximately \$40,000. Applications requesting an amount below the minimum will not be considered.

Start Date and Length of Grant Contract Period: The term of this grant contract is one year from September 1, 2019, through August 31, 2020, with the ability for an extension of time, subject to and contingent on funding and approval by the OAG.

No Match or Volunteer Requirements: There are no match or volunteer requirements.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring and review components will include, but are not limited to, information provided by the applicant on the proposed project activities and budget. Funding decisions will use a competitive allocation method. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final and are not subject to appeal.

Grant Purpose Area: All grant projects must address one or more of the purpose areas as stated in the Application Kit.

Funding for Applications may be prioritized for pre-adoption counseling, post-adoption counseling and advertising relating to adoption. Applicants are encouraged to prioritize their needs and explain the reason for their funding request.

Prohibitions on Use of Choose Life Grant Program Funds: OAG grant funds may not be used to support activities related to providing abortions or abortion-related services, or making referrals to abortion providers. OAG grant funds may not be used to support or pay the costs of equipment, overtime, out-of-state travel, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Lyndsay Ysla at Grants@oag.texas.gov or (512) 936-0792.

TRD-201901429

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: May 15, 2019



Request for Applications (RFA) for the Domestic Violence High Risk Teams Grant Program

The Office of the Attorney General (OAG) is soliciting applications for the Domestic Violence High Risk Teams Grant Program to utilize funds for developing and providing statewide support for activities of Domestic Violence High Risk Teams in reducing or preventing incidents of domestic violence and providing domestic violence services to victims.

Applicable Funding Source for Domestic Violence High Risk Teams Grant Program:

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: State Domestic Violence Coalition - a statewide nonprofit organization that has been identified as a domestic violence coalition by a state or federal agency authorized to make that designation.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account (for Applicants who did not create an account during the OVAG, VCLG, and SAPCS-State grant application cycle): Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. *If an on-line account is not created, the Applicant will be unable to apply for funding.* To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

1. First Name
2. Last Name
3. Email Address
4. Organization Legal Name

Note: Applicants who created accounts during the Other Victim Assistance Grant (OVAG), Victim Coordinator and Liaison Grant (VCLG), and Sexual Assault Prevention and Crisis Services (SAPCS)-State grant application cycle are already registered in GOALS.

Registered Applicants should access their Grant Programs webpage (homepage) in GOALS and select the green View Grant Programs button. If the answers provided on the Eligibility questions matched to the Domestic Violence High Risk Teams Grant Program, the application will be available to the Applicant.

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is \$300,000 per fiscal year. The maximum amount for a program is \$300,000 per fiscal year, with the specified amount being awarded to the identified subgrantees, as detailed in the Application Kit.

Grant Period - Up to Two Years: The grant contract period (term) is up to two years from September 1, 2019, through August 31, 2021, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Volunteer Requirements: All Domestic Violence High Risk Teams Grant Program Applicants must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the Applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final and are not subject to appeal.

Grant Purpose Area: The purpose of the Domestic Violence High Risk Teams Grant Program is to develop and provide statewide support for activities of Domestic Violence High Risk Teams in reducing or preventing incidents of domestic violence and providing domestic violence services to victims. Approved purpose activities may include:

1. Identifying and contracting with sites in local communities that have the capacity to implement best practice models for high risk teams or expand existing Domestic Violence High Risk Teams;
2. Evaluating funded site results;
3. Identifying best practice models that may be implemented in other communities;
4. Providing technical assistance to communities interested in implementing Domestic Violence High Risk Teams;
5. Making recommendations to improve the implementation and/or the expansion of Domestic Violence High Risk Teams in Texas.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Lyndsay Ysla at Grants@oag.texas.gov, or (512) 936-0792.

TRD-201901431
 Ryan L. Bangert
 Deputy Attorney General for Legal Counsel
 Office of the Attorney General
 Filed: May 15, 2019



Request for Applications (RFA) for the Sexual Assault Services Program Grant

The Office of the Attorney General (OAG) is soliciting applications for the Sexual Assault Services Program Grant to utilize funds for preventing sexual assault or improving services for survivors and other individuals affected by sexual violence.

Applicable Funding Source for the Sexual Assault Services Program Grant:

The source of funding is through a biennial appropriation by the Texas Legislature. All funding is contingent upon an appropriation to the OAG by the Texas Legislature. The OAG makes no commitment that an Application, once submitted, or a grant, once funded, will receive subsequent funding.

Eligibility Requirements:

Eligible Applicants: State Sexual Assault Coalition - a statewide non-profit organization that has been identified as a state sexual assault coalition by a state or federal agency authorized to make that designation.

Eligibility: The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the Application Kit; the application is filed after the deadline established in the Application Kit; or the application does not meet other requirements as stated in the RFA and the Application Kit.

How to Obtain Application Kit: The OAG will post the Application Kit on the OAG's website at <https://www.texasattorneygeneral.gov/divisions/grants>. Updates and other helpful reminders about the application process will also be posted at this location. Potential Applicants are encouraged to refer to the site regularly.

Deadlines and Filing Instructions for the Grant Application:

Create an On-Line Account (for Applicants who did not create an account during the OVAG, VCLG, and SAPCS-State grant application cycle): Creating an on-line account in the Grant Offering and Application Lifecycle System (GOALS) is required to apply for a grant. If an on-line account is not created, the Applicant will be unable to apply for funding. To create an on-line account, the Applicant must email the point of contact information to Grants@oag.texas.gov with the following information:

1. First Name
2. Last Name
3. Email Address
4. Organization Legal Name

Note: Applicants who created accounts during the Other Victim Assistance Grant (OVAG), Victim Coordinator and Liaison Grant (VCLG), and Sexual Assault Prevention and Crisis Services (SAPCS)-State grant application cycle are already registered in GOALS.

Registered Applicants should access their Grant Programs webpage (homepage) in GOALS and select the green View Grant Programs button. If the answers provided on the Eligibility questions matched to the Sexual Assault Services Program Grant, the application will be available to the Applicant.

Application Deadline: The Applicant must submit its application, including all required attachments, to the OAG by the deadline established in the Application Kit.

Filing Instructions: Strict compliance with the submission instructions, as provided in the Application Kit, is required. The OAG will **not** consider an Application if it is not submitted by the due date. The OAG will **not** consider an Application if it is not in the manner and form as stated in the Application Kit.

Minimum and Maximum Amounts of Funding Available: Minimum and maximum amounts of funding are subject to change as stated in the Application Kit. The minimum amount of funding for all programs is \$65,000 per fiscal year. The maximum amount for a local program is \$1,224,999 per fiscal year.

Grant Period - Up to Two Years: The grant contract period (term) is up to two years from September 1, 2019, through August 31, 2021, subject to and contingent on funding and/or approval by the OAG.

No Match Requirements: There are no match requirements.

Volunteer Requirements: All Sexual Assault Services Program Grant Applicants must have a volunteer component. Specific requirements for the volunteer component will be stated in the Application Kit.

Award Criteria: The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components will include, but are not limited to, information provided by the Applicant on the proposed project activities and budget. Funding decisions will be determined using a competitive allocation method. All grant decisions including, but not limited to, eligibility, evaluation and review, and funding rest completely within the discretionary authority of the OAG. The decisions made by the OAG are final and are not subject to appeal.

Grant Purpose Areas: Grant contracts awarded under this Application Kit may be used to carry out the purpose of Texas Government Code, Chapter 420, including standardizing the quality of services provided, preventing sexual assault, providing training and technical assistance to sexual assault programs, and improving services to survivors and other individuals affected by sexual violence.

Note: The purpose areas include the content of the FY 2018-2019 Program Grant to a State Sexual Assault Coalition and the Sexual Assault Services Program Grant Application Kits.

Prohibitions on Use of Grant Funds: OAG grant funds may not be used to support or pay the costs of lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; costs of travel that are unrelated to the direct delivery of services that support the OAG grant-funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

OAG Contact Person: If additional information is needed, contact Lyndsay Ysla at Grants@oag.texas.gov, or (512) 936-0792.

TRD-201901433

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: May 15, 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 05/20/19 - 05/26/19 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/20/19 - 05/26/19 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-201901417

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 14, 2019



Credit Union Department

Application of Out of State Branch

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Eastman Credit Union, Kingsport, Tennessee to operate a Foreign (out of state) Branch Office to be located at 2020 West Loop 281, Longview, Texas 75605.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-character-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201901427

John J. Kolhoff

Commissioner

Credit Union Department

Filed: May 15, 2019



Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Mobility Credit Union, Irving, Texas to expand its field of membership. The proposal would permit persons who live, worship, attend school or work in Grayson County, Texas to be eligible for membership in the credit union.

An application was received from Energy Capital Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Strike Corporation to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-character-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201901425

John J. Kolhoff

Commissioner

Credit Union Department

Filed: May 15, 2019



Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications.

Application to Expand Field of Membership - Approved

Mobility CU, Irving, Texas - See *Texas Register* issue dated May 29, 2019.

Brazos Valley Schools CU, Katy, Texas - See *Texas Register* issue dated June 29, 2018.

TRD-201901424

John J. Kolhoff

Commissioner

Credit Union Department

Filed: May 15, 2019



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 25, 2019**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **June 25, 2019**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: A & R Pallets, LLC; DOCKET NUMBER: 2019-0290-AIR-E; IDENTIFIER: RN104960935; LOCATION: Rusk, Cherokee County; TYPE OF FACILITY: wood pallet manufacturing and repair facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,942; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: City of George West; DOCKET NUMBER: 2018-1738-MWD-E; IDENTIFIER: RN101651495; LOCATION: George West, Live Oak 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 WQ0010455002, Effluent Limitations and

Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$31,875; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$31,875; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: Club Corp Bear Creek Golf Course; DOCKET NUMBER: 2019-0431-PST-E; IDENTIFIER: RN102274792; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: equipment and fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: German Pellets Texas, LLC; DOCKET NUMBER: 2018-1204-AIR-E; IDENTIFIER: RN106205032; LOCATION: Woodville, Tyler County; TYPE OF FACILITY: wood pellet manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit (FOP) Number O3609, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.146(2), FOP Number O3609, GTC and Special Terms and Conditions Number 10, and THSC, §382.085(b), by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: \$6,332; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: GRESHAM USA LLC dba Liberty Crossing; DOCKET NUMBER: 2019-0259-PST-E; IDENTIFIER: RN102234473; LOCATION: Tyler, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days and failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: \$4,062; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: HIDALGO NORTH PROPERTIES, INCORPORATED dba El Tigre Food Store 15; DOCKET NUMBER: 2019-0349-PST-E; IDENTIFIER: RN104354717; LOCATION: McAllen, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.52(a)(2), by failing to ensure that a licensed underground storage tank (UST) on-site supervisor was present at the facility during construction activities on the UST system; PENALTY: \$1,575; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2016-1906-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(b)(1)(H) and §122.143(4), Federal Operating Permit (FOP) Number O2288, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, FOP Number O1320, GTC and STC Number 2.F, and FOP Number O3056, GTC and STC Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to provide the estimated total quantities of all compounds or mixtures

of air contaminants released during an emissions event in the final record; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review (NSR) Permit Number 5952A, Special Conditions (SC) Number 1, FOP Number O1320, GTC and STC Number 14, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 5952A, Special Conditions (SC) Number 1, NSR Permit Number 19823, SC Number 1, NSR Permit Number 20160, SC Number 1, FOP Number O1320, GTC and STC Number 14, FOP Number O2288, GTC and STC Number 19, FOP Number O3056, GTC and STC Number 17, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 19823, SC Number 1, FOP Number O2288, GTC and STC Number 19, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 106169, SC Number 1, FOP Number O1320, GTC and STC Number 14, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(c), NSR Permit Number 19823, SC Number 28.B, FOP Number O2288, GTC and STC Number 19, and THSC, §382.085(b), by failing to comply with the average annual flow rate to the flare; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O2288, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$90,440; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$45,220; ENFORCEMENT COORDINATOR: Robyn Babyak, (512) 239-1853; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: JM TRADING INC dba J's Mini Mart; DOCKET NUMBER: 2018-1686-PST-E; IDENTIFIER: RN101538643; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every 30 days; and 30 TAC §334.51(b)(2) and TWC, §26.3475(c)(2), by failing to equip the UST system with spill and overflow prevention equipment that is designed, installed, and maintained in a manner that will prevent any spilling or overflowing of regulated substances; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Meadowhill Regional Municipal Utility District; DOCKET NUMBER: 2019-0144-MWD-E; IDENTIFIER: RN101511384; LOCATION: Spring, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011215001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$32,025; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$25,620; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Mearstone Properties, L.P.; DOCKET NUMBER: 2019-0477-WQ-E; IDENTIFIER: RN108875410; LOCATION: Azle, Tarrant County; TYPE OF FACILITY: construction site; RULE VIO-

LATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: MERISHA INC dba T'S MART; DOCKET NUMBER: 2019-0034-PST-E; IDENTIFIER: RN101840759; LOCATION: Paris, Lamar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: MOUNTAIN BREEZE, L.L.C.; DOCKET NUMBER: 2018-1554-PWS-E; IDENTIFIER: RN101202505; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(d)(4)(B) (formerly §290.109(c)(4)(B)) and §290.122(c)(2)(A) and (f), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on August 15, 2016, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected, and failing to issue a public notification and submit a copy of the public notification to the executive director regarding the failure to collect raw groundwater samples during the month of August 2016; PENALTY: \$228; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: NA Group LLC dba Lewisville Chevron; DOCKET NUMBER: 2019-0230-PST-E; IDENTIFIER: RN101473718; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.225 and Texas Health and Safety Code, §382.085(b), by failing to comply with annual Stage I vapor recovery testing requirements; and 30 TAC §334.50(b)(2)(A)(i)(III) and (ii), and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tanks; PENALTY: \$10,435; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Nancy Castillo Gaytan and Jorge Luis Gaytan as Co-Trustees of the Gaytan Family Revocable Trust; DOCKET NUMBER: 2019-0158-MSW-E; IDENTIFIER: RN110259645; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: \$3,937; ENFORCEMENT COORDINATOR: Amanda Scott, (512) 239-2558; REGIONAL OFFICE: 1804 West Jefferson, Avenue Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: PLEAK REAL PROPERTY, INCORPORATED; DOCKET NUMBER: 2019-0298-PWS-E; IDENTIFIER: RN103947925; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval by the executive director prior to placing the facility's public drinking water well into service; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; PENALTY: \$125; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: San Saba Aggregates, LLC; DOCKET NUMBER: 2019-0263-AIR-E; IDENTIFIER: RN108402504; LOCATION: Richland Springs, San Saba County; TYPE OF FACILITY: surface mining facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Jesse Sandoval; DOCKET NUMBER: 2019-0584-WOC-E; IDENTIFIER: RN103512497; LOCATION: Kenedy, Karnes County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Jamie Knittel, (512) 239-2518; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: Scurry County; DOCKET NUMBER: 2019-0272-PWS-E; IDENTIFIER: RN101259869; LOCATION: Hermleigh, Scurry County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to timely collect lead and copper samples for the January 1, 2015 - December 31, 2017, monitoring period; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with the compliance monitoring data for calendar years 2016 and 2017; PENALTY: \$180; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: George D. Sons, Jr.; DOCKET NUMBER: 2019-0598-WOC-E; IDENTIFIER: RN105560007; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(20) COMPANY: South Hampton Resources, Incorporated; DOCKET NUMBER: 2019-0105-AIR-E; IDENTIFIER: RN101995611; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: distillation and chemical toll processing plant; RULES VIOLATED: 30 TAC §106.6(b) and §122.143(4), Permit By Rule Registration Number 117379, Federal Operating Permit Number O2776, General Terms and Conditions and Special Terms and Conditions Numbers 15 and 16, and Texas Health and Safety Code, §382.085(b), by failing to comply with all representations with regard to construction plans, operating procedures, and maximum emission rates in any certified registration; PENALTY: \$20,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$8,100; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(21) COMPANY: Robbie Thomas; DOCKET NUMBER: 2019-0601-WOC-E; IDENTIFIER: RN110648292; LOCATION: Cotulla, La Salle County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 707 E. Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(22) COMPANY: Tim Smith dba Swisher Tire & Fuel Card Pump; DOCKET NUMBER: 2018-1706-PST-E; IDENTIFIER: RN101866515; LOCATION: Tulia, Swisher County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Tyler Gerhardt, (512) 239-2506; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(23) COMPANY: VALESKA'S, INCORPORATED; DOCKET NUMBER: 2019-0069-PWS-E; IDENTIFIER: RN110050077; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(B), by failing to provide a well casing a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.41(c)(3)(J), by failing to provide the Facility's well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inch per foot; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for the Facility's well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.43(c)(2), by failing to ensure that the Facility's ground storage tank's (GST) hatch remains locked except during inspections and maintenance; 30 TAC §290.43(c)(3), by failing to cover the GST's overflow discharge opening with a gravity-hinged and weighted cover, an elastomeric duckbill valve, or other approved device to prevent the entrance of insects and other nuisances which closes automatically and fits tightly with no gap over 1/16 inch; 30 TAC §290.43(c)(4), by failing to provide the GST with a liquid level indicator; 30 TAC §290.45(b)(1)(B)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more service pumps having a minimum total capacity of 2.0 gallons per minute per connection; 30 TAC §290.45(b)(1)(B)(iv) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 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(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(t), by failing to post a legible sign at the Facility's production, treatment and storage facilities that contains the name of the Facility and an emergency telephone number where a responsible official can be contacted; 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 §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 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: \$2,656; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: WestRock Texas, L.P.; DOCKET NUMBER: 2019-0191-AIR-E; IDENTIFIER: RN102157609; LOCATION: Evadale, Jasper County; TYPE OF FACILITY: paper mill; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 20365 and PSDTX785M7, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1265, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 14, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O1265, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; PENALTY: \$4,841; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(25) COMPANY: Wood Acres Properties LLC.; DOCKET NUMBER: 2018-1031-PWS-E; IDENTIFIER: RN101237170; LOCATION: Willis, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2017 - December 31, 2017, monitoring period; 30 TAC §290.117(i)(1) and §290.122(c)(2)(A) and (f), by failing to timely provide the results of lead and copper tap sampling to the ED for the January 1, 2014 - December 31, 2016, monitoring period, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to timely provide the results of lead and copper tap sampling for the January 1, 2014 - December 31, 2016, monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for lead tap samples collected during the January 1, 2013 - June 30, 2013, July 1, 2013 - December 31, 2013, and January 1, 2014 - December 31, 2016, monitoring periods; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct the Stage 2 Disinfection Byproducts sampling for the January 1, 2016 - December 31, 2016, monitoring period; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for calendar year 2016; PENALTY: \$749; ENFORCEMENT COORDINATOR: Julianne Dewar, (512) 239-1001; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201901413
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 14, 2019

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Notice of Correction to Agreed Order Number 4

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 4, for the City of Huxley. The errors are as submitted by the commission.

The reference to the penalty should be corrected to read: "\$5,081".

The reference to the Supplemental Environmental Project Offset Amount should be corrected to read: "\$4,065".

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-201901414
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 14, 2019

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Notice of Public Meeting for Air Quality Permits Proposed
Air Quality Permit Numbers 147681, PSDTX1522, and
GHGPSDTX172

APPLICATION. Jupiter Brownsville, LLC, 700 Louisiana St Ste 2410, Houston, Texas 77002, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of proposed State Air Quality Permit 147681, issuance of Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX1522, and issuance of Greenhouse Gas (GHG) PSD Air Quality Permit GHGPSDTX172 for emissions of GHGs, which would authorize construction of the Jupiter Brownsville located at 11700 RL Ostos Road, Brownsville, Cameron County, Texas 78521. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=25.961111&lng=-97.355277&zoom=13&type=r>

The existing facility will emit the following air contaminants in a significant amount: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, and sulfur dioxide. In addition, the facility will emit the following air contaminants: Hazardous Air Pollutants (HAPS), hydrogen sulfide, and sulfuric acid mist.

The degree of PSD increment predicted to be consumed by the existing facility and other increment-consuming sources in the area is as follows:

Sulfur Dioxide

Maximum Averaging Time	Maximum Increment Consumed ($\mu\text{g}/\text{m}^3$)	Allowable Increment ($\mu\text{g}/\text{m}^3$)
3-hour	417	512
24-hour	31	91
Annual	2	20

PM₁₀

Maximum Averaging Time	Maximum Increment Consumed ($\mu\text{g}/\text{m}^3$)	Allowable Increment ($\mu\text{g}/\text{m}^3$)
24-hour	0	30
Annual	4	17

Nitrogen Dioxide

Maximum Averaging Time	Maximum Increment Consumed ($\mu\text{g}/\text{m}^3$)	Allowable Increment ($\mu\text{g}/\text{m}^3$)
Annual	3	25

PM_{2.5}

Maximum Averaging Time	Maximum Increment Consumed ($\mu\text{g}/\text{m}^3$)	Allowable Increment ($\mu\text{g}/\text{m}^3$)
24-hour	7	9
Annual	1	4

The executive director has determined that the emissions of air contaminants from the existing facility which are subject to PSD review will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and

will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, May 28, 2019, at 7:00 p.m.

Amigoland Event Center

1010 Mexico Boulevard

Brownsville, Texas 78520

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <http://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our website at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis, will be available for viewing and copying at the TCEQ central office, the TCEQ Harlingen

regional office, and at the Brownsville Public Library, 2600 Central Boulevard, Brownsville, Cameron County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Harlingen Regional Office, 1804 W Jefferson Ave, Harlingen, Texas. Further information may also be obtained from Jupiter Brownsville, LLC at the address stated above or by calling Mr. Tom Ramsey, Chief Executive Officer at (713) 600-1600.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: May 14, 2019

TRD-201901426

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 15, 2019



Notice of Request for Comment and Opportunity for a Hearing on the Draft Alternative Method of Control for National Emission Standard for Benzene Emissions from Benzene Transfer Operations

The Texas Commission on Environmental Quality (TCEQ) requests comments on the Draft Alternative Method of Control (AMOC) for National Emission Standard for Benzene Emissions from Benzene Transfer Operations under the requirements of 40 Code of Federal Regulations (CFR) §61.12(d)(1).

Summary: On April 12, 2019, **Deer Park Refining Limited Partnership, Shell Oil Company (Shell) Deer Park Refinery**, requested an AMOC under the federal Clean Air Act. Shell requests approval to substitute an enclosed marine vapor recovery system routed to a fuel recovery system at the refinery in lieu of the requirements in 40 CFR §61.302(b) to use a vapor capture system routed to an incinerator, steam generating unit, process heater, carbon adsorber, or flare for marine loading of benzene. The specified control systems allowed under the rule are required to achieve 98% control of volatile organic compounds (VOCs), and the proposed marine vapor recovery system complies with 40 CFR §63.562(b)(3) and achieves 98% or better control of VOCs. With this notice, the TCEQ is soliciting comment on all aspects of the AMOC request and the resulting alternative operating conditions necessary to achieve a reduction in emissions of VOCs at least as equivalent to the reduction in emissions required by 40 CFR §61.302(b).

Written Comments: Written comments or request for a hearing may be submitted to Anne Inman, P.E., MC 163, Air Permits Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. Electronic comments or requests 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 Project Number 2019-107-OTH-NR. The comment period closes June 25, 2019. For further information, please contact Anne Inman, P.E., Operating Support Section, Air Permits Division, TCEQ (512) 239-1276.

TRD-201901415

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 14, 2019



Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: 8-Day Report due October 29, 2018, for Committees

Carol E. Champion, The PAC for Progressive Texas Women, P.O. Box 131944, Houston, Texas, 77219

Deadline: Monthly Report due March 5, 2019, for Committees

Prisylla A. Jasso, Strategic International Development PAC, 5000 N. 1st Ln. #173, McAllen, Texas, 78504

TRD-201901412

Ian M. Steusloff

Interim Executive Director

Texas Ethics Commission

Filed: May 13, 2019



Texas Health and Human Services Commission

Public Notice: Pharmacist Reimbursable Services

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 19-0014 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to implement new pharmacy delivery models that improve cost-effectiveness with the goal of improving health outcomes for Medicaid/CHIP beneficiaries. The proposed amendment is effective September 1, 2019.

The proposed amendment is estimated to have no fiscal impact. Texas will utilize the existing reimbursement rates established for the pharmacy and acute care benefit.

To obtain copies of the proposed amendment, interested parties may contact Cynthia Henderson, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or, by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Health and Human Services Commission.

TRD-201901394

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: May 10, 2019



Texas Department of Housing and Community Affairs

Notice of Public Hearing and Public Comment Period on the Draft 2020 Regional Allocation Formula Methodology

The Texas Department of Housing and Community Affairs (the Department) will hold a public hearing to accept public comment on the Draft 2020 Regional Allocation Formula (RAF) Methodology.

The public hearing will take place as follows:

Wednesday, May 29, 2019
2:30 p.m. Austin local time
Stephen F. Austin Building
1700 North Congress Avenue, Room 172
Austin, Texas 78701

The RAF may be accessed from TDHCA's Public Comment Center at: <https://www.tdhca.state.tx.us/public-comment.htm>.

The RAF utilizes appropriate statistical data to measure the affordable housing need and available resources in the 13 State Service Regions that are used for planning purposes. The RAF also allocates funding to rural and urban subregions within each region. The Department has flexibility in determining variables to be used in the RAF, per §2306.1115(a)(3) of the Tex. Gov't Code, "the department shall develop a formula that...includes other factors determined by the department to be relevant to the equitable distribution of housing funds..." The RAF is revised annually to reflect current data, respond to public comment, and better assess regional housing needs and available resources.

The RAF methodology explains the use of factors, in keeping with the statutory requirements, which include the need for housing assistance, the availability of housing resources, and other factors relevant to the equitable distribution of housing funds in urban and rural areas of the state.

The Single Family HOME Investment Partnerships Program (HOME), Multifamily HOME, Housing Tax Credit (HTC), and State Housing Trust Fund (SHTF) program RAFs each use slightly different formulas because the programs have different eligible activities, households, and geographical service areas. For example, §2306.111(c) of the Tex. Gov't Code requires that 95% of HOME funding be set aside for non-participating jurisdictions (non-PJs). Therefore, the Single Family and Multifamily HOME RAFs only use need and available resource data for non-PJs.

The public comment period for the Draft 2020 RAF methodology will be open from Friday, May 24, 2019, through Friday, June 14, 2019, at 5:00 p.m., Austin local time. Anyone may submit comments on the Draft 2020 RAF Methodology in written form or oral testimony at the May 29, 2019, public hearing.

Written comments concerning the Draft 2020 RAF Methodology may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-0070. Comments must be received no later than Friday, June 14, 2019, at 5:00 p.m. Austin local time.

Individuals who require auxiliary aids or services for the public hearing on May 29, 2019, should contact Terri Roeber, ADA Responsible Employee, at (512) 475-3957 or Relay Texas at (800) 735-2989, at least three days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearing should contact Elena Peinado by phone at (512) 475-3814 or by email at elena.peinado@tdhca.state.tx.us at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un interprete, favor de llamar a Elena Peinado al siguiente numero (512) 475-3814 o enviarle un correo electronico a elena.peinado@tdhca.state.tx.us por lo menos tres dias antes de la junta para hacer los preparativos apropiados.

TRD-201901406
David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
Filed: May 13, 2019

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Mobilitas Insurance Company, a foreign fire and/or casualty company. The home office is in Glendale, Arizona.

Application to do business in the state of Texas for Clearcover Insurance Company, a foreign fire and/or casualty company. The home office is in Chicago, Illinois.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Christian Hertzberg, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201901432
Carole Cearley
Assistant General Counsel
Texas Department of Insurance
Filed: May 15, 2019

◆ ◆ ◆
Texas Lottery Commission

Scratch Ticket Game Number 2149 "Fireball 5s"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2149 is "FIREBALL 5s". The play style is "coordinate with prize legend".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2149 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2149.

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: 5 SYMBOL, \$1.00, \$2.00, \$3.00, \$10.00, \$20.00, \$100 and \$1,000.

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. 2149 - 1.2D

PLAY SYMBOL	CAPTION
5 SYMBOL	WIN\$
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THR\$
\$10.00	TEN\$
\$20.00	TWY\$
\$100	ONHN
\$1,000	ONTH

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 (2149), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 2149-0000001-001.

H. Pack - A Pack of the "FIREBALL 5s" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; Tickets 006 to 010 on the next page etc.; and Tickets 146 to 150 will be on the last page. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning 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 "FIREBALL 5s" Scratch Ticket Game No. 2149.

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 "FIREBALL 5s" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose six (6) Play Symbols. If a player reveals 3 matching prize amounts in the play area, the player wins that amount. If the player reveals one or more "5" Play Symbol(s) in the play area, the player wins the corresponding prize in the PRIZE LEGEND. (Only highest prize

paid.) 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 six (6) 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 six (6) 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 six (6) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the six (6) 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. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to one (1) time.

D. No Ticket will contain two (2) sets of three (3) matching Prize Symbols.

E. No Ticket will contain four (4) or more matching Prize Symbols.

F. No Ticket will contain more than five (5) "5" (WIN\$) Play Symbols.

G. No Ticket will contain one (1) or more "5" (WIN\$) Play Symbols with three (3) matching Prize Symbols.

H. The "5" (WIN\$) Play Symbol will only appear on winning Tickets and will win as per the prize structure.

I. Winning Tickets will display the number of "5" (WIN\$) Play Symbols as dictated in the PRIZE LEGEND shown on the Ticket.

J. On Tickets winning with three (3) matching Prize Symbols, non-winning Prize Symbols will never appear more than two (2) times.

K. Winning Tickets will contain three (3) matching Prize Symbols or one (1) or more "5" (WIN\$) Play Symbols.

L. Non-Winning Tickets will never have more than two (2) matching Prize Symbols or a "5" (WIN\$) Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "FIREBALL 5s" Scratch Ticket Game prize of \$1.00, \$2.00, \$3.00, \$10.00, \$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. 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 "FIREBALL 5s" Scratch Ticket Game prize of \$1,000, 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 "FIREBALL 5s" 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 "FIREBALL 5s" 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 "FIREBALL 5s" 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 9,000,000 Scratch Tickets in Scratch Ticket Game No. 2149. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2149 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1	970,000	9.28
\$2	510,000	17.65
\$3	240,000	37.50
\$10	150,000	60.00
\$20	40,000	225.00
\$50	1,775	5,070.42
\$100	1,700	5,294.12
\$500	250	36,000.00
\$1,000	6	1,500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.70. 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. 2149 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. 2149, 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-201901416
Bob Biard
General Counsel
Texas Lottery Commission
Filed: May 14, 2019

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Panhandle Regional Planning Commission

Publication for Panhandle Water Planning Group Open Seats

PUBLIC NOTICE

The Panhandle Water Planning Group (PWPG), a regional water planning group formed pursuant to the requirements of Senate Bill 1 of 1997 and all subsequent related water planning legislation, is soliciting nominations to fill two (2) voting positions on the PWPG. Nominees are being solicited that represent the following interest groups that either operate in or have interests in the Panhandle Water Planning Area (PWPA): Environmental (1 seat) and/or Industries (1 seat). In addition, the appropriate nominees will have knowledge of or specific interests in regional water planning as defined by Texas Administrative Code, Title 37, Part 10, Chapter 357. The 21-county PWPA is composed of:

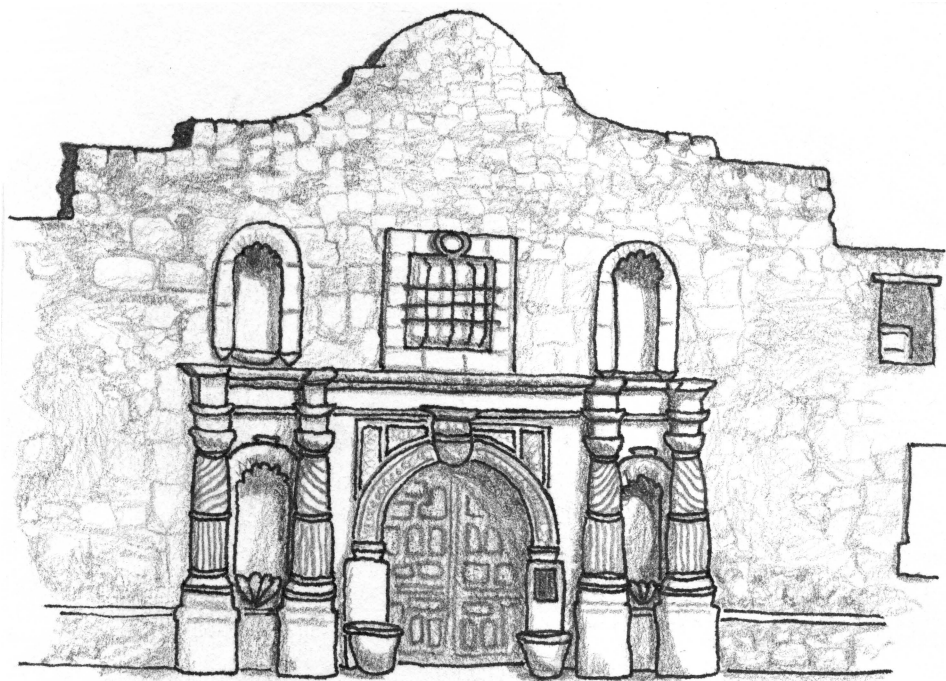
Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hemphill, Roberts, Hutchinson, Moore, Hartley, Oldham, Potter, Carson, Gray, Wheeler, Randall, Armstrong, Donley, Collingsworth, Childress, and Hall Counties.

The nominee(s) selected to fill this position will occupy a voting seat on the Panhandle Water Planning Group. The terms of office shall be the standard terms of office as applies to the current members of the PWPG. The PWPG is seeking nominees with strong consensus support and geographical diversity within the 21 county region to fill the above position.

Nominations may be made to the Executive Committee of the PWPG until 5:00 p.m., June 17, 2019. Nominations should be made by either telephone, facsimile, or mail. Nominations must include: Nominee's name, address, telephone number, qualifications to represent Environmental and/or Industrial Interests, and which interest group and/or entity the nominee represents. Nominations should be submitted to: PWPG Executive Committee, c/o Dustin Meyer, PRPC, P.O. Box 9257, Amarillo, Texas 79105. Telephone (806) 372-3381, Fax (806) 373-3268. Please call for further information and/or nomination form.

TRD-201901409
Dustin Meyer
Local Government Services Director
Panhandle Regional Planning Commission
Filed: May 13, 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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