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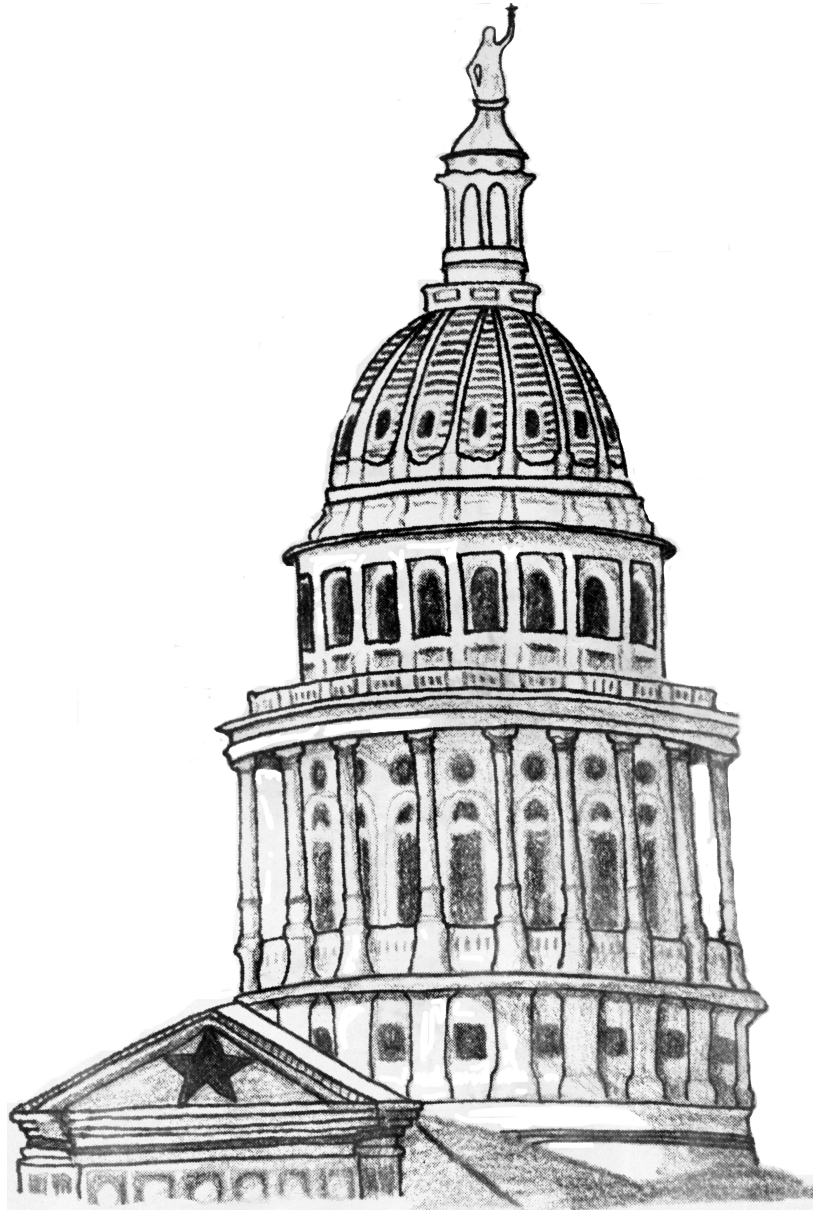
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THE GOVERNOR

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

Appointments

Appointments for December 2, 2019

Appointed to the Judicial Compensation Commission, for a term to expire February 1, 2023, Linda W. Kinney of Comfort, Texas (replacing Frederick C. "Fred" Tate of Colleyville, who resigned).

Appointed as Commissioner of the Department of Family and Protective Services, for a term to expire August 31, 2021, Jaime D. Masters of Round Rock, Texas (replacing Henry L. "Hank" Whitman, Jr. of Floresville, who resigned).

Appointed to the Product Development and Small Business Incubator Board, for a term to expire February 1, 2021, Kimberly M. Gramm of Lubbock, Texas (replacing Kellilynn M. "Kelli" Frias, Ph.D. of Lubbock, who resigned).

Appointed to the Product Development and Small Business Incubator Board, for a term to expire February 1, 2025, Jack J. "Jody" Goehring, IV of Austin, Texas (Mr. Goehring is being reappointed).

Appointed to the Product Development and Small Business Incubator Board, for a term to expire February 1, 2025, David R. Margrave of San Antonio, Texas (Mr. Margrave is being reappointed).

Appointed to the Product Development and Small Business Incubator Board, for a term to expire February 1, 2025, Hayden Padgett of Plano, Texas (replacing Arun Agarwal of Dallas, whose term expired).

Appointments for December 3, 2019

Appointed to the Crime Victims' Institute Advisory Council, for a term to expire January 31, 2020, Matthew L. "Matt" Ferrara, Ph.D. of Austin, Texas (replacing Richard L. "Rick" Reynolds of Austin, whose term expired).

Appointed to the Crime Victims' Institute Advisory Council, for a term to expire January 31, 2021, Janis K. "Jan" Langbein of Dallas, Texas (replacing Ann Marie Matthews of Jourdanton, whose term expired).

Appointed to the Texas Poet Laureate, State Musician and State Artists Committee, for a term to expire October 1, 2021, Leah Gamble Martin of Plano, Texas (replacing Carol A. Hollen of Mineola, whose term expired).

Appointments for December 4, 2019

Appointed to the North Texas Tollway Authority Board of Directors, for a term to expire August 31, 2021, Frankie "Lynn" Gravley of Gunter, Texas (Mr. Gravley is being reappointed).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2022, Daphne D. Brookins of Forest Hill, Texas (Ms. Brookins is being reappointed).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2022, Annette G. Juba of Austin, Texas (Ms. Juba is being reappointed).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2022, Michael H. "Mike" Morath of Austin, Texas (Commissioner Morath is being reappointed).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2022, Girien R. Salazar of Houston, Texas (replacing Kathryn R. Timmerman of Austin, whose term expired).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2022, Eugene J. "Gene" Seaman of Corpus Christi, Texas (Representative Seaman is being reappointed).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2022, Kathrine J. "Kate" Williamson of Midland, Texas (Ms. Williamson is being reappointed).

Appointments for December 5, 2019

Designated as presiding officer of the Texas Council on Alzheimer's Disease and Related Disorders, for a term to expire at the pleasure of the Governor, Marc I. Diamond, M.D. of Dallas (Dr. Diamond is replacing Rita Hortenstine of Dallas as presiding officer).

Appointed to the Texas Council on Alzheimer's Disease and Related Disorders, for a term to expire August 31, 2025, Laura Fink Defina, M.D. of Richardson, Texas (Dr. DeFina is being reappointed).

Appointed to the Texas Council on Alzheimer's Disease and Related Disorders, for a term to expire August 31, 2025, Angela Turner of Normangee, Texas (replacing Rita Hortenstine of Dallas, whose term expired).

Appointed to the Commission on State Emergency Communications, for a term to expire September 1, 2025, Clinton D. Sawyer of Amherst, Texas (Mayor Sawyer is being reappointed).

Appointments for December 6, 2019

Designated as president of the Red River Authority of Texas Board of Directors, for a term to expire at the pleasure of the Governor. Todd W. Boykin of Amarillo.

Appointed to the Red River Authority of Texas Board of Directors, for a term to expire August 11, 2023, Jerry Dan Davis of Wellington, Texas (replacing William W. "Wade" Porter of Canyon, who resigned).

Appointed to the Red River Authority of Texas Board of Directors, for a term to expire August 11, 2025, Mary Lou Bradley of Memphis, Texas (replacing Penny C. Carpenter of Silverton, whose term expired).

Appointed to the Red River Authority of Texas Board of Directors, for a term to expire August 11, 2025, Zackary K. "Zack" Smith of Canyon, Texas (Mr. Smith is being reappointed).

Appointed to the Red River Authority of Texas Board of Directors, for a term to expire August 11, 2025, Stephen A. Thornhill of Denison, Texas (Mr. Thornhill is being reappointed).

Designated as presiding officer of the Texas Commission on Law Enforcement, for a term to expire at the pleasure of the Governor, Kim-

berley A. "Kim" Lemaux of Arlington (Chief Lemaux is replacing Joel W. Richardson of Canyon as presiding officer).

Appointed to the Texas Commission on Law Enforcement, for a term to expire August 30, 2025, Patricia Garza Burruss of Dallas, Texas (Ms. Burruss is being reappointed).

Appointed to the Texas Commission on Law Enforcement, for a term to expire August 30, 2025, Michael W. "Mike" Griffis of Odessa, Texas (replacing Joel W. Richardson of Canyon, whose term expired).

Appointed to the Texas Commission on Law Enforcement, for a term to expire August 30, 2025, Jason D. Hester of Lago Vista, Texas (Major Hester is being reappointed).

Appointments for December 10, 2019

Appointed to the Trinity River Authority Board of Directors, for a term to expire March 15, 2023, Lisa A. Hembry of Dallas, Texas (replacing Christina Melton Crain of Dallas, who resigned).

Appointed to the Trinity River Authority Board of Directors, for a term to expire March 15, 2025, Henry Borbolla, III of Fort Worth, Texas (Mr. Borbolla is being reappointed).

Appointed to the Trinity River Authority Board of Directors, for a term to expire March 15, 2025, Cary "Cole" Camp of Arlington, Texas (replacing Ana Laura Saucedo of Mesquite, whose term expired).

Appointed to the Trinity River Authority Board of Directors, for a term to expire March 15, 2025, Tommy G. "Tom" Fordyce of Huntsville, Texas (Mr. Fordyce is being reappointed).

Appointed to the Trinity River Authority Board of Directors, for a term to expire March 15, 2025, David Blake Leonard of Liberty, Texas (Mr. Leonard is being reappointed).

Appointed to the Trinity River Authority Board of Directors, for a term to expire March 15, 2025, Lewis H. McMahan of Dallas, Texas (replacing James Wyatt Neale of Dallas, whose term expired).

Appointed to the Trinity River Authority Board of Directors, for a term to expire March 15, 2025, Amirali "Amir" Rupani of Dallas, Texas (Mr. Rupani is being reappointed).

Appointed to the Trinity River Authority Board of Directors, for a term to expire March 15, 2025, Carl "Dwayne" Somerville of Mexia, Texas (Mr. Somerville is being reappointed).

Appointed to the Trinity River Authority Board of Directors, for a term to expire March 15, 2025, Brenda K. Walker of Palestine, Texas (replacing Dudley K. Skyrme of Palestine, whose term expired).

Appointments for December 11, 2019

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2023, Jesse C. Gatewood of Corpus Christi, Texas (replacing Mervin "Paul" Jones of Austin, whose term expired).

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2023, Eliu M. "Michael" Hinojosa, Ed.D. of Dallas, Texas (replacing Carmen Olivas Graham of El Paso, whose term expired).

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2023, John L. Martin of San Antonio, Texas (replacing Robert Hawkins of Bellmead, whose term expired).

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2023, Richard C. "Rick" Rhodes of Austin, Texas (replacing Sharla E. Hotchkiss of Midland, whose term expired).

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2025, Mark A. Dunn of Lufkin, Texas (Mr. Dunn is being reappointed).

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2025, Thomas C. "Tom" Halbouty of Southlake, Texas (Mr. Halbouty is being reappointed).

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2025, Richard M. Rhodes, Ph.D. of Austin, Texas (Dr. Rhodes is being reappointed).

Appointed to the Texas Workforce Investment Council, for a term to expire September 1, 2025, Brandon R. Willis of Beaumont, Texas (replacing Mark Barberena of Fort Worth, whose term expired).

Appointments for December 16, 2019

Appointed to the Executive Council of Physical Therapy and Occupational Therapy Examiners, for a term to expire February 1, 2021, Manoranjan "Mano" Mahadeva of Plano, Texas (replacing Arthur "Roger" Matson of Georgetown, whose term expired).

Greg Abbott, Governor

TRD-201904921



Proclamation 41-3703

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that exceptional drought conditions pose a threat of imminent disaster in Bandera, Blanco, Burnet, Concho, Karnes, Kendall, Kinney, Llano, Maverick, Medina, Real, Uvalde, Val Verde, Zapata, and Zavala counties.

WHEREAS, significantly low rainfall and prolonged dry conditions continue to increase the threat of wildfire across these portions of the state; and

WHEREAS, these drought conditions pose an imminent threat to public health, property, and the economy;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties based on the existence of such threat.

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

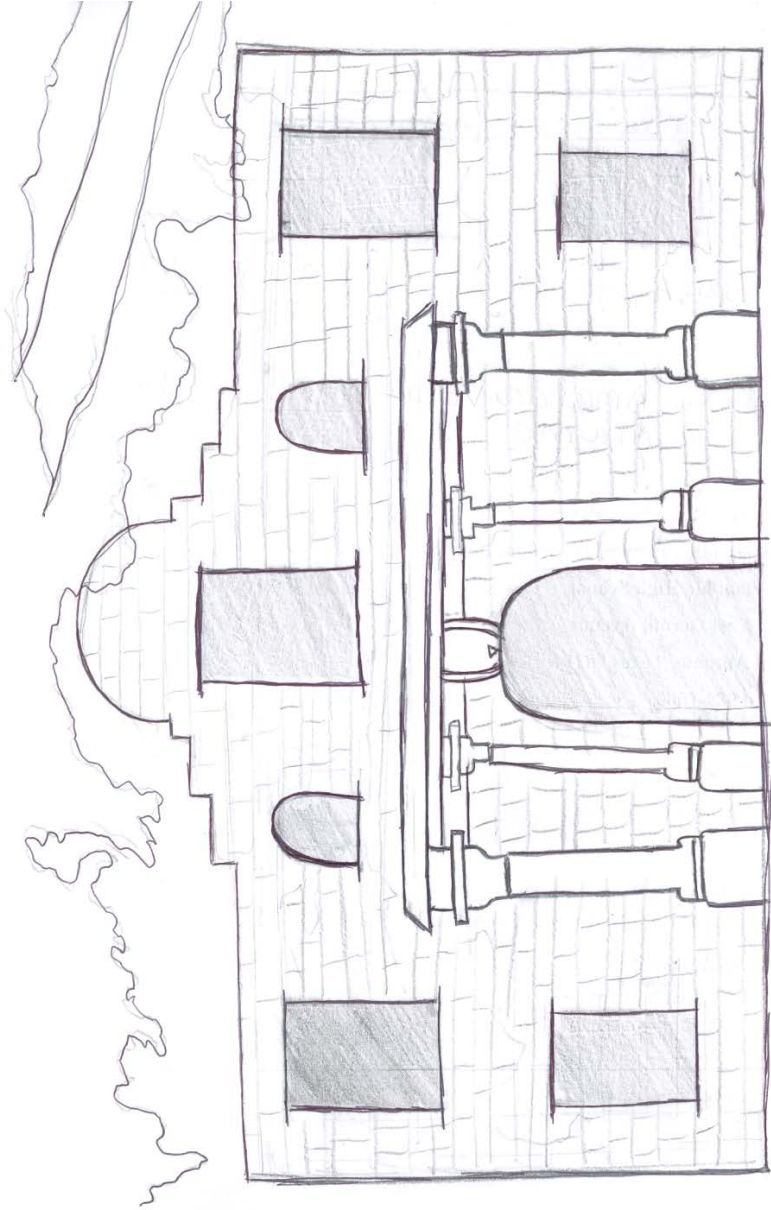
Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 12th day of December, 2019.

Greg Abbott, Governor





THE ATTORNEY GENERAL

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

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. 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: <https://www.texasattorneygeneral.gov/attorney-general-opinions>.)

Requests for Opinions

RQ-0318-KP

Requestor:

The Honorable Larry Taylor
Chair, Committee on Education
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Matters related to the Texas Windstorm Insurance Association and its compliance with House Bill 1900 and Senate Bill 615 (RQ-0318-KP)

Briefs requested by January 10, 2020

RQ-0319-KP

Requestor:

The Honorable Lilli A. Hensley
Sterling County Attorney
Post Office Box 88
Sterling City, Texas 76951

Re: Whether a county may call a bond election to fund the construction, repair, improvement, and maintenance of city roads (RQ-0319-KP)

Briefs requested by January 10, 2020

RQ-0320-KP

Requestor:

Mr. Steven C. McCraw
Director
Texas Department of Public Safety
Post Office Box 4087
Austin, Texas 78773-0001

Re: Whether over-the-road buses traveling on interstate highways in Texas are subject to the tandem axle weight limitations established in Transportation Code section 621.101(a)(2) (RQ-0320-KP)

Briefs requested by January 15, 2020

RQ-0321-KP

Requestor:

The Honorable Heather Stebbins
Kerr County Attorney
700 Main Street Suite BA-103
Kerrville, Texas 78028

Re: Whether a hearing on an application for court-ordered mental health services conducted pursuant to section 574.031 of the Health and Safety Code must be recorded by an official court reporter (RQ-0321-KP)

Briefs requested by January 15, 2020

RQ-0322-KP

Requestor:

Mr. Mike Novak
Executive Director
Texas Facilities Commission
Post Office Box 13047
Austin, Texas 78711-3047

Re: Authority of the Texas Facilities Commission and the State Preservation Board in relation to a Bill of Rights monument authorized by House Concurrent Resolution 111, adopted by the Eightieth Legislature (RQ-0322-KP)

Briefs requested by January 15, 2020

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

TRD-201904852
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: December 17, 2019



Requests for Opinions

RQ-0323-KP

Requestor:

The Honorable Roberto Serna

District Attorney
293rd Judicial District
458 Madison Street
Eagle Pass, Texas 78852

Re: Application of article III, section 53 of the Texas Constitution to invoices submitted to a county under an amended service contract for services performed prior to the amendment (RQ-0323-KP)

Briefs requested by January 16, 2020

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

TRD-201904882
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: December 18, 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 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §§21.4901 - 21.4904

The Commissioner of Insurance adopts new 28 TAC §§21.4901 - 21.4904, concerning disclosures by out-of-network providers, on an emergency basis, effective January 1, 2020. The emergency adoption is necessary to timely implement exceptions to balance billing prohibitions in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111, as enacted by Senate Bill 1264, 86th Legislature, Regular Session (2019).

REASONED JUSTIFICATION. The new rules interpret and implement SB 1264, which prohibits balance billing for certain health benefit claims under certain health benefit plans; provides exceptions to balance billing prohibitions; and authorizes an independent dispute resolution process for claim disputes between certain out-of-network providers and health benefit plan issuers and administrators.

SB 1264's balance billing protections generally apply to enrollees of health benefit plans offered by insurers and health maintenance organizations that the department regulates, as well as to the Texas Employees Group, the Texas Public School Employees Group, and the Texas School Employees Uniform Group. The changes to law made by the bill apply to health care and medical services or supplies provided on or after January 1, 2020.

The new rules implement the exceptions to balance billing prohibitions found in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111. The exceptions to balance billing prohibitions are only applicable in non-emergencies when a health benefit plan enrollee elects to receive covered health care or medical services or supplies from a facility-based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or from a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider.

New §21.4901 addresses the purpose and applicability of new Subchapter OO.

New §21.4902 provides that words and terms defined in Insurance Code Chapter 1467 have the same meaning when used in Subchapter OO, unless the context clearly indicates otherwise.

New §21.4903 clarifies that, for purposes of the exceptions to the balance billing prohibitions, an enrollee's election is only valid if the enrollee has a meaningful choice between an in-network provider and an out-of-network provider, the enrollee was not coerced by another provider or their health benefit plan into selecting the out-of-network provider, and the enrollee signs a notice and disclosure statement at least ten business days before the service or supply is provided acknowledging that the enrollee may be liable for a balance bill and chooses to proceed with the service or supply anyway. Only an out-of-network provider that chooses to balance bill an enrollee is required to provide a notice and disclosure statement to the enrollee. The out-of-network provider may choose to participate in SB 1264's claim dispute resolution process instead of balance billing an enrollee. New §21.4903 also adopts by reference the notice and disclosure statement that must be filled out by the out-of-network provider and given to the enrollee if the provider chooses to balance bill.

New §21.4904 requires health benefit plans to help their enrollees determine their financial responsibility for a service or supply for which a notice and disclosure statement has been provided, consistent with Insurance Code §1661.002.

An emergency rule is necessary

Pursuant to Government Code §§2001.034 and 2001.036(a)(2), the new rules are adopted on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice.

SB 1264 was enacted by the Legislature to help protect Texans from surprise balance bills, also known as surprise medical bills, when the consumer has no choice regarding their medical provider. When an insurance company fails to cover the cost of a medical service or supply provided by a physician or other provider that is not in the insurance company's network, the provider typically bills the patient for the remaining balance (including any applicable copayment, coinsurance, and deductible). This is commonly referred to as "balance billing." A balance bill is typically based on a provider's chargemaster rate, which can be highly inflated. See *In re N. Cypress Med. Ctr. Operating Co., Ltd.*, 559 S.W.3d 128, 132 (Tex. 2018) ("Commentators lament the increasingly arbitrary nature of chargemaster prices, noting that, over time, they have lost any direct connection to costs[.]") (internal citation and quotations omitted). One study found that Texas, at 27%, has the third highest rate of out-of-network charges for services performed at in-network facilities. See The Peterson Center on Healthcare and Kaiser Family Foundation, *An Examination of Surprise Medical Bills and Proposals to Protect Consumers From Them*, October 2019, (www.healthsystemtracker.org/brief/an-exami-

nation-of-surprise-medical-bills-and-proposals-to-protect-consumers-from-them/).

Medical debt was a significant factor in almost 60% of U.S. bankruptcies, according to a study published in the March 2019 American Journal of Public Health. The U.S. Consumer Financial Bureau reported that medical bills accounted for more than half of unpaid bills sent to collection agencies in 2014. For many consumers, a surprise balance bill can be financially ruinous, which in turn will likely dissuade some consumers from seeking necessary or advisable medical care in the future. See Kaiser Family Foundation & Episcopal Health Foundation, *Texans' Experiences with Health Care Affordability and Access*, July 2018, (www.kff.org/health-costs/report/texans-experiences-health-care-affordability-access/) ("[R]oughly six in ten [Texas residents] say someone in their household has postponed or skipped some sort of medical care in the past year because of the cost."). The impact of balance billing to the public's health and financial welfare is clear.

To protect consumers, SB 1264 prohibits many out-of-network providers from balance billing patients except in a very narrow set of circumstances. The new rules are necessary to prevent unscrupulous providers from exploiting the law's narrow exceptions to the balance billing prohibition, which would exacerbate the balance billing emergency if allowed. Without the new rules, a provider could demand that a patient sign away his or her balance billing protections mere moments before the patient receives surgery or some other medical care. Furthermore, without the new rule, the provider could slip an inconspicuous SB 1264 notice amongst a number of other forms that the enrollee must review prior to the procedure. Patients could be forced to make tough financial and health-related decisions in an extremely vulnerable state, potentially without even knowing the balance billing protections they would be waiving. And if a patient hesitates or refuses to waive their balance billing protections shortly before the procedure, there could be significant health consequences if treatment is delayed or refused because of arguments over billing between patient and provider.

Because SB 1264 governs health care or medical services or supplies provided on or after January 1, 2020, the threat to consumers' health and financial welfare is imminent. For services or supplies provided before January 1, enrollees that receive a balance bill have the option to force their provider and health care plan to participate in mediation over the bill. But with the passage of SB 1264, enrollees will no longer have that option for services or supplies provided on or after January 1. Instead, SB 1264 will protect consumers from the effects of balance billing with new balance billing prohibitions and a claim dispute resolution process. It is imperative that the new balance billing prohibitions function as intended for the benefit of consumers, consistent with SB 1264, and the new rules are designed to do just that. Therefore, it is vital to the public health and welfare that the new rules go into effect no later than January 1, 2020.

Future rulemaking

Under Government Code §2001.034, this emergency rule may not be in effect for longer than 180 days. TDI intends to propose this or a similar rule under the normal rulemaking process and will consider any additional action necessary in the event unforeseen issues arise with the adopted sections. Future rulemaking may also provide additional guidance.

STATUTORY AUTHORITY. The sections are adopted on an emergency basis with an expedited effective date of January 1, 2020, under Insurance Code §§36.001, 752.0003(c), and 1467.003; and Government Code §§2001.034 and 2001.036(a)(2).

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

Insurance Code §752.0003(c) authorizes the Commissioner to adopt rules as necessary to implement balance billing prohibitions and exceptions to those prohibitions outlined in Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111.

Insurance Code §1467.003 provides that the Commissioner may adopt rules as necessary to implement the Commissioner's powers and duties under Insurance Code Chapter 1467.

Government Code §2001.034 provides that 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 requires adoption of a rule on fewer than 30 days' notice.

Government Code §2001.036(a)(2) provides that if a state agency finds that an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare, and subject to applicable constitutional or statutory provisions, a rule is effective immediately on filing with the secretary of state, or on a stated date less than 20 days after the filing date.

§21.4901. Purpose and Applicability.

(a) The purpose of this subchapter is to interpret and implement Insurance Code §§1271.157, 1271.158, 1301.164, 1301.165, 1551.229, 1551.230, 1575.172, 1575.173, 1579.110, and 1579.111; and Insurance Code Chapter 1467.

(b) Section 21.4903 of this title is only applicable to a covered nonemergency health care or medical service or supply provided by:

(1) a facility-based provider that is not a participating provider for a health benefit plan, if the service or supply is provided at a health care facility that is a participating provider; or

(2) a diagnostic imaging provider or laboratory service provider that is not a participating provider for a health benefit plan, if the service or supply is provided in connection with a health care or medical service or supply provided by a participating provider.

§21.4902. Definitions.

Words and terms defined in Insurance Code Chapter 1467 have the same meaning when used in this subchapter, unless the context clearly indicates otherwise.

§21.4903. Out-of-Network Notice and Disclosure Requirements.

(a) For purposes of this section a "balance bill" is a bill for an amount greater than an applicable copayment, coinsurance, and deductible under an enrollee's health care plan, as specified in Insurance Code §§1271.157(c), 1271.158(c), 1301.164(c), 1301.165(c), 1551.229(c), 1551.230(c), 1575.172(c), 1575.173(c), 1579.110(c), or 1579.111(c).

(b) An out-of-network provider may not balance bill an enrollee receiving a nonemergency health care or medical service or supply, and the enrollee does not have financial responsibility for a balance bill, unless the enrollee elects to obtain the service or supply from the

out-of-network provider knowing that the provider is out-of-network and the enrollee may be financially responsible for a balance bill. For purposes of this subsection, an enrollee elects to obtain a service or supply only if:

(1) the enrollee has a meaningful choice between a participating provider for a health benefit plan issuer or administrator and an out-of-network provider. No meaningful choice exists if an out-of-network provider was selected for or assigned to an enrollee by another provider or health benefit plan issuer or administrator;

(2) the enrollee is not coerced by a provider or health benefit plan issuer or administrator when making the election. A provider engages in coercion if the provider charges or attempts to charge a non-refundable fee, deposit, or cancellation fee for the service or supply prior to the enrollee's election; and

(3) the out-of-network provider or the agent or assignee of the provider provides written notice and disclosure to the enrollee and obtains the enrollee's written consent, as specified in subsection (c) of this section.

(c) If an out-of-network provider elects to balance bill an enrollee, rather than participate in claim dispute resolution under Insurance Code Chapter 1467 and Subchapter PP of this title, the out-of-network provider or agent or assignee of the provider must provide the enrollee with the notice and disclosure statement specified in subsection (e) of this section prior to scheduling the nonemergency health care or medical service or supply. To be effective, the notice and disclosure statement must be signed and dated by the enrollee no less than 10 business days before the date the service or supply is performed or provided. The enrollee may rescind acceptance within five business days from the date the notice and disclosure statement was signed, as explained in the notice and disclosure statement form.

(d) Each out-of-network provider must maintain a copy of the notice and disclosure statement, signed and dated by the enrollee, for four years. The provider must provide the enrollee with a copy of the signed notice and disclosure statement on the same date the statement is signed.

(e) The department adopts by reference Form AH025 as the notice and disclosure statement to be used under this section. The notice and disclosure statement may not be modified, including its format or font size, and must be presented to an enrollee as a stand-alone document and not incorporated into any other document. The form is available from the department by accessing its website at www.tdi.texas.gov/forms.

(f) A provider who seeks and obtains an enrollee's signature on a notice and disclosure statement under this section is not eligible to participate in claim dispute resolution under Insurance Code Chapter 1467 and Subchapter PP of this title.

§21.4904. Health Benefit Plan Issuer and Administrator Responsibility.

Consistent with Insurance Code §1661.002, a health benefit plan issuer or administrator must assist an enrollee with evaluating the enrollee's financial responsibility for a health care or medical service or supply based on the information in the notice and disclosure statement provided to the enrollee under §21.4903 of this title.

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 December 18, 2019.

TRD-201904899

James Person
General Counsel

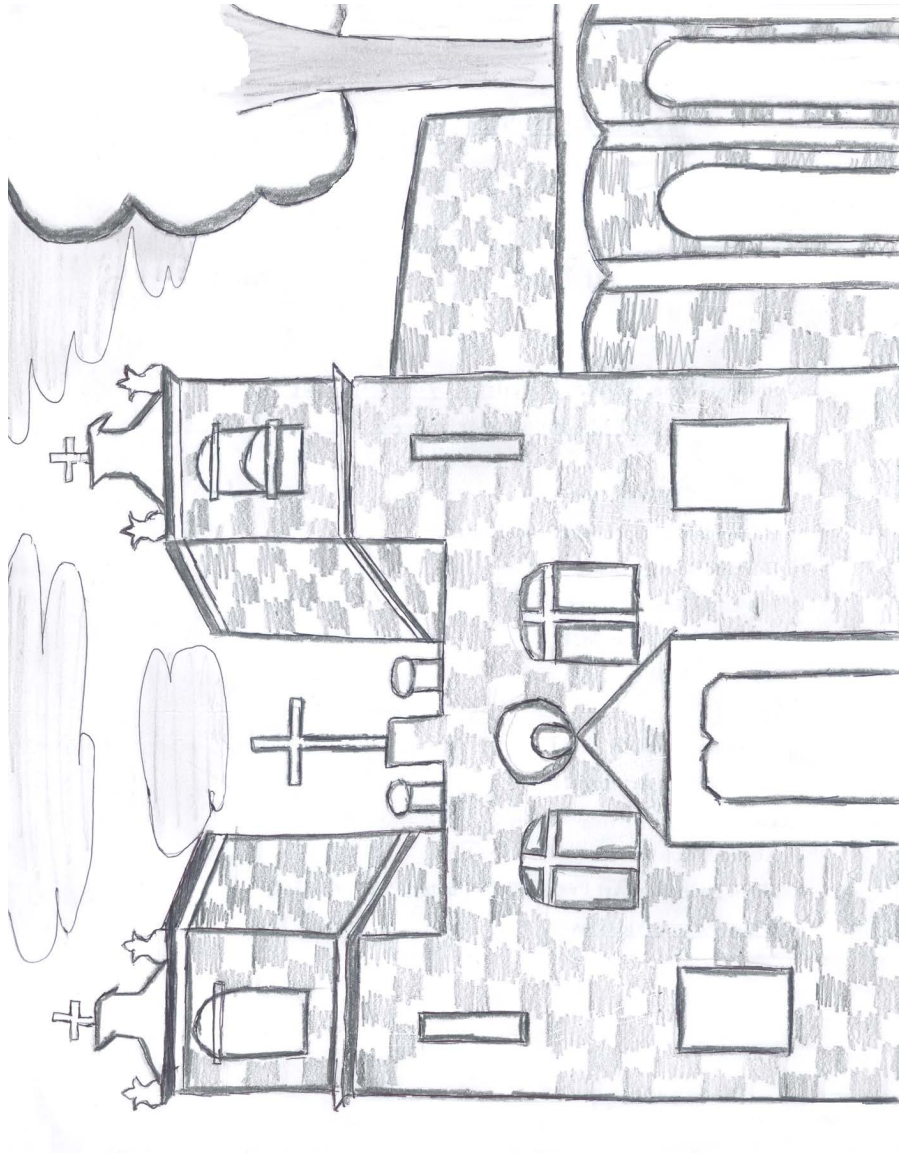
Texas Department of Insurance

Effective date: January 1, 2020

Expiration date: April 30, 2020

For further information, please call: (512) 676-6584





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 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

SUBCHAPTER H. TEXAS CRIME STOPPERS PROGRAM

1 TAC §§3.9000, 3.9005 - 3.9007, 3.9011, 3.9015, 3.9017, 3.9019, 3.9021, 3.9025

The Texas Crime Stoppers Council (Council) proposes amendments to 1 TAC §§3.9000, 3.9005 - 3.9007, 3.9011, 3.9015, 3.9017, 3.9019, and 3.9021, concerning the functions of the Council under Chapter 414 of the Texas Government Code. The Council also proposes a new rule at 1 TAC §3.9025, concerning the use of excess funds by crime stoppers organizations under §414.010(d) of the Texas Government Code.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW RULE

The Council is responsible for encouraging, advising, and assisting in the creation of crime stoppers organizations (organizations) and the implementation of their programs, as well as fostering the detection of crime and carrying out other duties described in Chapter 414 of the Texas Government Code. The primary purpose of the proposed amendments to the existing rules is to update policies and procedures to provide a smoother operating framework for the Council and the organizations. The proposed amendments, as well as the new rule, are also in response to statutory revisions to the Texas Government Code enacted by the 86th Legislature, Regular Session, in House Bill 3316 (HB 3316).

The proposed amendments to 1 TAC §3.9000 would adjust the timing and required documentation for an organization to submit, and the Council to take action on, the organization's application for continuing certification, as well as how such renewal process affects the organization's existing certification. The Council also proposes to allow the director of the Council (Director) or the Council to specify other information for inclusion in applications for certification at their discretion, and to change the applicable accounts and timing of financial statements that must be included in applications for continuing certification. The Council further proposes to allow organizations applying for renewal of their certification to complete their training requirements at any point during their current certification, instead of twelve months prior to application, as is the current standard.

The proposed amendments to §3.9005 would allow the Chairman, in addition to the Council itself, to notify an organization that the Council will consider its decertification at an upcoming

meeting and would clarify the content of such notice. In addition, the Council proposes to create a process through which the Director can address risk of noncompliance with the laws and rules governing crime stoppers organizations by either placing an organization on a corrective action plan or recommending it to the Council for decertification. The proposed amendments to §3.9015 would also implement this process to address any noncompliance that was identified by the Office of the Governor, Criminal Justice Division, while conducting a financial or programmatic review or audit of the organization.

The proposed amendments to §3.9006 would clarify how an organization's certification expires or is not renewed and would also clarify the content of the notice to an organization that the Council is considering the renewal of its certification.

The proposed amendments to §3.9007 would allow more flexibility in determining the effective date of decertification for organizations that are winding down or not seeking to renew their certification. The Council further proposes to amend §§3.9005 - 3.9007 to implement new close-out reporting requirements for de-certified, expiring, and dissolving organizations.

The Council's current rules at §§3.9010, 3.9011, and 3.9013 require organizations to report certain information to the Council or the Director. The proposed amendments to §3.9011 would add the reporting requirements from §§3.9010 and 3.9013, which are proposed for repeal in another notice, to §3.9011 to consolidate reports. The Council also proposes to allow the Director or the Council to request additional information in the annual report, change the frequency of the required statistical report from quarterly to semi-annually, and require a report within 30 days if an organization changes the composition of its executive board or its executive director (if applicable) or law enforcement coordinator.

The Council's current rules at §§3.9017, 3.9019, and 3.9021 contain procedures for merging organizations and changing the territory of a certified organization. The proposed amendments to §§3.9017, 3.9019, and 3.9021 would give the Council and the Director discretion to request any other helpful information in assessing the mergers or expansions, as applicable, and would require merging or expanding organizations to provide reviews of all financial accounts over a different time period, but no longer require that financial reviews be conducted by a certified public accountant. The Council further proposes to clarify the continuing certification process for merging and expanding organizations. The proposed amendments to §§3.9017 and 3.9019, in particular, would allow the Director to specify which merger, dissolution, and compliance forms should be submitted, and would make other changes to reflect that more than one excess funds account can be created. Other proposed amendments to §3.9019 would allow a previously certified organization to submit additional forms of proof that it repaid outstanding

fees to the Office of the Comptroller. The Council also proposes to require interest from a law enforcement agency, rather than the citizens, of an area seeking to join an existing organization under the proposed amendments to §3.9021. Finally, the Council proposes to end a prohibition on merged organizations establishing excess funds accounts in the first three years after their merger.

The existing rules that the Council proposes to amend are revised to update the rule based on current statute and to make other clean-up changes, such as to defined terms and cross-references.

As enacted by the 86th Legislature, Regular Session, HB 3316 removed from statute the formula for determining the amount of funds that organizations could move from their rewards accounts into excess funds accounts, and instead left such amount to be determined by Council rule. HB 3316 also provided for the Council to issue rules explaining the "law enforcement or public safety purposes relating to crime stoppers or juvenile justice" for which excess funds may be used. The proposed new §3.9025 sets out the formula for funds that may be deposited into excess funds accounts and defines such law enforcement or public safety purposes.

FISCAL NOTE

Margie Fernandez-Prew, Director of the Texas Crime Stoppers Council, has determined that for each year of the first five years in which the proposed amendments and new rule are in effect, there are no expected fiscal implications for the state or local governments as a result of enforcing or administering the proposed amendments and new rule. Ms. Fernandez-Prew has further determined that the proposed amendments and new rule may affect certain local economies and geographic areas differently than other local economies and geographic areas depending on which areas have organizations in operation. But the effect on any particular local economy or geographic area is unknown. There is no anticipated effect on local employment or local economies as a whole because the aggregate amount of expenditures made by organizations should remain unchanged as a result of the proposed amendments and new rule.

PUBLIC BENEFIT AND COSTS

Ms. Fernandez-Prew has also determined that for each year of the first five years in which the proposed amendments and new rule are in effect, the public benefit anticipated as a result of enforcing or administering the proposed amendments and new rule will be to implement the statutory changes made by HB 3316 and to allow the Council greater efficiency in administering their operations and certifying and assisting organizations. There are no anticipated economic costs to persons required to comply with the proposed amendments and new rule. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Finally, Ms. Fernandez-Prew has determined that for each year of the first five years in which the proposed amendments and new rule are in effect, the amendments and new rule will have the following effect on government growth. Neither the proposed amendments nor the new rule will create or eliminate any government programs or employee positions. Additionally, neither the proposed amendments nor the new rule will require

an increase or decrease in future legislative appropriations to the Council or change any fees paid to the Council. The proposed new rule creates a new regulation at §3.9025 in response to statutory changes enacted by HB 3316. The proposed amendments expand certain existing regulations, including by giving the Director authority to place an organization that is at risk of no longer meeting the certification requirements or duties on a corrective action plan. The proposed amendments also limit other existing regulations in that they streamline and clarify certification and review requirements. While no rules are repealed in their entirety in this notice, the proposed amendments do remove the ability to extend the certification period for an organization, the requirement that financial reviews be conducted by a certified public accountant, the limitation on merging organizations from forming excess funds accounts, and other changes in order to update to the current statute. Furthermore, neither the proposed amendments nor the new rule increases or decreases the number of individuals subject to the applicability of the rules. The proposed amendments and new rule are not anticipated to affect this state's economy.

SUBMITTAL OF COMMENTS

Written comments regarding the proposed rule amendments or new rule may be submitted to Margie Fernandez-Prew, Office of the Governor, Texas Crime Stoppers Council, P.O. Box 12428, Austin, Texas 78711 or to txcrimestoppers@gov.texas.gov with the subject line "Council Rules." The deadline for receipt of comments is 5:00 p.m. CST on February 3, 2020. All requests for a public hearing on the proposed rule amendments or new rule, submitted under the Administrative Procedure Act, must be received by the Council no more than fifteen (15) days after the notice of proposed changes and additions in the sections have been published in the *Texas Register*.

STATUTORY AUTHORITY

The amendments and new rule are proposed under Government Code, §414.006, which provides that the Council may adopt rules to carry out its functions under that chapter.

Cross Reference to Statute:

Chapter 414, Government Code, as amended by House Bill 3316, 86th Legislature, Regular Session.

§3.9000. Certification.

(a) The Texas Crime Stoppers Council (Council) shall, on application by a crime stoppers organization as defined by §414.001(2) of the Texas Government Code (organization), determine whether the organization meets the requirements to be certified to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A [Article 42.12] of the Texas Code of Criminal Procedure.

(b) The Council shall [~~in its discretion,~~] certify a crime stoppers organization to receive those repayments or payments if, considering the organization, continuity, leadership, community support, and general conduct of the organization, the Council determines that the repayments or payments will be spent to further the crime prevention purposes of the organization.

(c) Certification is valid for two years from the date of issuance or, if applicable, the effective date of continued certification. The Council may take action on a crime stoppers organization's Application for Continuing Certification prior to the expiration of the organization's current certification, and specify the effective date of the continued certification, provided that the effective date is no later than the expiration date of the current certification. If a crime stoppers or-

ganization's certification expires, the organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A [Article 42.12] of the Texas Code of Criminal Procedure, until the organization obtains certification. [The two-year certification period may be extended under the following circumstances:]

{(1) If an organization's application to renew its certification is received by the director of the Council before the two-year certification period expires, the organization's certification shall continue in effect until the Council makes a decision regarding the renewal of its certification.}

{(2) The chairman of the Council may extend the two-year certification period for a period of time not to exceed 90 days if:}

{(A) one of the following extenuating circumstances occurs before the two-year certification period expires:}

{(i) natural or man-made disaster;}

{(ii) serious illness, incapacity, or death of the chairman, treasurer, or secretary of the organization's board of directors;}

{(iii) serious illness, incapacity, or death of one of the organization's law enforcement/civilian coordinators; or}

{(iv) death of a member of the immediate family of one of the officials listed in clauses (ii) and (iii) of this subparagraph;}

{(B) one of the extenuating circumstances listed in subparagraph (A) of this paragraph has a detrimental effect on the organization's ability to submit an application for certification before the two-year certification period expires; and}

{(C) the director of the Council receives the organization's written request to extend the certification period no later than 20 calendar days after one of the extenuating circumstances listed in subparagraph (A) of this paragraph occurs.}

(d) A private, nonprofit crime stoppers organization must submit the following information to the director of the Council in order to obtain initial certification:

(1) Documentation from the Internal Revenue Service granting the organization tax-exempt status;

(2) Proof that the following persons completed a training course provided by the Criminal Justice Division of the Office of the Governor (CJD) [CJD] and the Council, or their designee, within the year prior to submission of the organization's [its] application for certification:

(A) one member of the organization's board of directors; [;] and

(B) one of the organization's law enforcement/civilian coordinators; and

(C) the executive director of the organization (if applicable);

(3) A completed and signed Conditions of Certification Form;

(4) The name, mailing address, email address, telephone number, occupation, and board position of each member of the organization's board of directors;

(5) The name, mailing address, email address, and telephone number of each of the organization's law enforcement/civilian coordinators;

(6) The name, mailing address, email address, telephone number, and occupation of the executive director (if applicable); [and]

(7) The description of the geographic territory or jurisdiction to which the organization desires to provide services; and

(8) Any additional information requested or specified by the Council or the director of the Council.

(e) A public crime stoppers organization must submit the following information to the director of the Council in order to obtain initial certification:

(1) Proof that one of the organization's law enforcement/civilian coordinators completed a training course provided by CJD and the [Texas Crime Stoppers] Council, or their designee, within the year prior to submission of the organization's [its] application for certification;

(2) A completed and signed Conditions of Certification Form;

(3) The name, mailing address, email address, telephone number, occupation, and board position of each member of the organization's governing board;

(4) The name, mailing address, email address, and telephone number of each of the organization's law enforcement/civilian coordinators;

(5) The name, mailing address, email address, telephone number, and occupation of the organization's executive director (if applicable); [and]

(6) The description of the geographic territory or jurisdiction to which the organization desires to provide services; and

(7) Any additional information requested or specified by the Council or the director of the Council.

(f) If the organization is currently certified by the Council, the organization must submit the documentation described in subsection (d) or (e) of this section, as applicable, with the exception of the training documentation required by subsections (d)(2) and (e)(1) of this section, and the following additional information [every two years] as part of its Application for Continuing [Continued] Certification, in each case no more than 240 days and no less than 180 days prior to the expiration of the current certification:

(1) [financial] statements for all financial accounts covering the [two-year certification] period from the beginning of the calendar year of the date of submission of the previous application to the present, showing beginning and ending balances for each calendar year and the current year-to-date, for all accounts containing funds originally obtained from repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A of the Texas Code of Criminal Procedure, on a form prescribed by the Council;

(2) documentation from the relevant courts or government agencies stating the amount of probation fees disbursed to the organization during the [two-year certification] period described in paragraph (1) of this subsection;

(3) any Crime Stoppers Program Annual [Probation Fee and Repayment] Reports that have not been submitted to the director of the Council as required by §3.9011 [§3.9010] of this chapter; [and]

(4) any [Quarterly] Statistical Reports that have not been submitted to the director of the Council or the Council's designee as required by §3.9013 of this chapter;

(5) proof that the following persons completed a training course provided by CJD and the Council, or their designee, after the date of issuance or the effective date, as applicable, of the current certification:

(A) one member of a private, nonprofit organization's board of directors (if applicable);

(B) one of the organization's law enforcement/civilian coordinators; and

(C) the executive director of a private, nonprofit organization (if applicable); and

(6) any additional information requested or specified by the Council or the director of the Council.

(g) Certification awarded to an organization is awarded only as to the specific geographic territory or jurisdiction described in the certification award.

(h) Decisions regarding the certification of crime stoppers organizations shall be made by the Council.

(i) The Council reserves the right to consider and take action on an incomplete Application for Continuing Certification if the Council determines from the information provided that the crime stoppers organization meets the certification requirements described in §414.011, Texas Government Code.

§3.9005. Decertification.

(a) During the two-year certification period, the Council shall [Texas Crime Stoppers Council (Council) may, in its discretion,] decertify a crime stoppers organization if it determines that the organization no longer meets the certification requirements described in §3.9000(b) [§3.9000] of this chapter, which may include a violation of state law, federal law, or Subchapter H of this chapter.

(b) If a crime stoppers organization is decertified by the Council, the organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A [Article 42.12] of the Texas Code of Criminal Procedure.

(c) The Council, or the Chairman of the Council, shall send written notification to the crime stoppers organization no later than 45 calendar days prior to the meeting at which the Council will consider the decertification of the organization. The written notification shall include the following:

(1) Reasons why the organization may no longer meet [Any noncompliance with] the certification requirements described in §3.9000(b) of this chapter; and

(2) The date, time, and location of the meeting at which the Council will consider the decertification of the organization.

(d) The crime stoppers organization shall submit a written response, which shall include an explanation and specific reasons why the organization believes that it should not be decertified. The written response must be received by the director of the Council at least 10 calendar days prior to the meeting at which the Council will consider the decertification of the organization.

(e) The Council shall render a decision regarding the decertification of the crime stoppers organization and shall notify the organization in writing of its decision.

(f) If a crime stoppers organization is decertified, the director of the Council shall notify the state comptroller, and the relevant courts, county auditors and community supervision and corrections de-

partments in the organization's region, that the organization is decertified and is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A [Article 42.12] of the Texas Code of Criminal Procedure.

(g) Not later than the 60th day after the date of decertification of the organization, the decertified organization shall forward all unexpended money received pursuant to §414.010 of the Texas Government Code [under this section] to the state comptroller and shall submit reports as required in §3.9011(b)(5) and §3.9011(d) of this chapter, covering the period since the last submitted reports, and any other information prescribed by the director of the Council or the Council.

(h) The director of the Council may determine that a certified crime stoppers organization is at risk of no longer meeting the certification requirements or duties described in §3.9000 of this chapter. If the director of the Council makes such a determination, the director of the Council may place the organization on a corrective action plan that specifies actions to be taken by the organization by a specified time, or the director of the Council may recommend to the Council that the organization be considered for decertification.

§3.9006. Expiration or Non-Renewal of Certification.

(a) At the end of the two-year certification period, [the Texas Crime Stoppers Council (Council) may, in its discretion, allow] a crime stoppers organization's certification will [to] expire [or vote to not renew its certification].

(b) If a crime stoppers organization's certification expires or is not renewed, the organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A [Article 42.12] of the Texas Code of Criminal Procedure.

(c) If an organization has submitted a timely application to renew its certification:

(1) The Council shall send written notification to the crime stoppers organization no later than 45 calendar days prior to the meeting at which the Council will consider the renewal of certification of the organization. The written notification shall include the following:

(A) Any reasons why the organization may no longer meet [Any noncompliance with] the certification requirements described in §3.9000(b) [§3.9000] of this chapter; and

(B) The date, time, and location of the meeting at which the Council will consider the certification renewal of the organization.

(2) The crime stoppers organization may submit a written response, which shall include an explanation and specific reasons why the organization believes that its certification should be renewed. The written response must be received by the director of the Council at least 10 calendar days prior to the meeting at which the Council will consider the renewed certification [decertification] of the organization.

(3) The Council shall render a decision regarding the certification renewal of the crime stoppers organization and shall notify the organization in writing of its decision.

(d) If a crime stoppers organization's certification expires or is not renewed, the director of the Council shall notify the state comptroller, and the relevant courts, county auditors and community supervision and corrections departments in the organization's region, that the organization is decertified and is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A [Article 42.12] of the Texas Code of Criminal Procedure.

(e) Not later than the 60th day after the date of expiration or non-renewal of the certification of the organization, the organization shall forward all unexpended money received pursuant to §414.010 of the Texas Government Code ~~[under this section]~~ to the state comptroller and shall submit reports as required in §3.9011(b)(5) and §3.9011(d) of this chapter, covering the period since the last submitted reports, and any other information prescribed by the director of the Council or the Council.

§3.9007. *Closing of Business.*

(a) If a crime stoppers organization chooses to no longer operate or to dissolve during its two-year certification period or if the organization chooses to not apply for renewal of its certification, the organization shall send written notification to the Texas Crime Stoppers Council (Council).

(b) The organization may request an effective date of decertification in the notification. The written notification will ~~[effectively]~~ decertify the organization, effective on a date determined by the director of the Council, provided that the effective date is no later than the expiration date of the current certification or the date requested by the organization, whichever is earlier. ~~[The date of the notification will serve as the date of decertification.]~~

(c) The closed or dissolved organization is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A ~~[Article 42.12]~~ of the Texas Code of Criminal Procedure.

(d) Upon receipt of this notification and effective decertification, the director of the Council shall notify the state comptroller, and the relevant courts, county auditors and community supervision and corrections departments in the organization's region, that the organization is decertified and is not eligible to receive repayments of rewards under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Chapter 42A ~~[Article 42.12]~~ of the Texas Code of Criminal Procedure.

(e) Not later than the 60th day after the date of dissolution or decertification of the organization, the dissolved or decertified organization shall forward all unexpended money received pursuant to §414.010 of the Texas Government Code ~~[under this section]~~ to the state comptroller and shall submit reports as required in §3.9011(b)(5) and §3.9011(d) of this chapter, covering the period since the last submitted reports, and any other information prescribed by the director of the Council or the Council.

§3.9011. *Crime Stoppers Program Reporting [Information Update Form].*

(a) A crime stoppers organization that is certified by the ~~[Texas Crime Stoppers] Council [(Council)]~~ must submit to the director of the Council a Crime Stoppers Program Annual Report ~~[Information Update Form]~~ no later than January 31 of each calendar year.

(b) A Crime Stoppers Program Annual Report ~~[Information Update Form]~~ must include the following information:

(1) The name, mailing address, email address, and telephone number of the crime stoppers organization, and the internet address of any website operated by the organization;

(2) The name, mailing address, email address, telephone number, occupation, and board position of each member of the organization's governing board;

(3) The name, mailing address, email address, telephone number, and occupation of the organization's executive director (if applicable); ~~[and]~~

(4) The name, mailing address, email address, and telephone number of each of the organization's law enforcement/civilian coordinators;~~[-]~~

(5) A report on the probation fees and repayments received by the organization including such information and in a manner prescribed by the director of the Council or the Council; and

(6) Any other information prescribed by the director of the Council or the Council.

(c) A crime stoppers organization that is certified by the Council must submit to the director of the Council an information update form prescribed by the director of the Council or the Council within 30 days if the organization has a change in the composition of its executive board or its executive director (if applicable) or law enforcement coordinator.

(d) A crime stoppers organization that is certified by the Council shall submit to the director of the Council, or the Council's designee, a Statistical Report on a form prescribed by the Council no later than January 31 and July 31 of each calendar year.

§3.9015. *Review.*

By accepting certification, a crime stoppers organization agrees to the following conditions of review:

(1) CJD will review the activities of a crime stoppers organization that is certified by the Texas Crime Stoppers Council (Council) as necessary to ensure that the organization's finances and programs further the crime prevention purposes of the organization in compliance with the laws and rules governing crime stoppers organizations.

(2) CJD may perform a desk review or an on-site review at the organization's location. In addition, CJD may request that the organization submit relevant information to CJD to support any review.

(3) After a review, the organization shall be notified in writing of any noncompliance identified by CJD in the form of a preliminary report.

(4) The organization shall respond to the preliminary report within a time frame specified by CJD.

(5) The organization's response shall become part of the final report, which shall be submitted to the organization and the director of the Council.

(6) The director of the Council may place an organization in noncompliance on a corrective action plan that specifies actions to be taken by the organization by a specified time, or the director of the Council may recommend to the Council that the organization be considered for decertification or non-renewal of certification of the organization by the Council.

(7) Any noncompliance, including an organization's failure to provide adequate documentation upon request, may serve as grounds for decertification~~[-]~~ expiration or non-renewal of certification of the organization by the Council.

§3.9017. *Mergers of Certified Organizations.*

If a certified crime stoppers organization agrees with another certified crime stoppers organization to merge and form a multi-county or multi-jurisdictional (e.g. ~~[i.e.]~~, county and city) organization, the merged organization must apply for continuing certification, and the following procedures must be followed:

(1) The certified crime stoppers organizations that want to merge must have contiguous borders.

(2) The merging organizations must choose a name for the merged organization unless both organizations agree to operate under the name of one of the existing organizations.

(3) The merged organization must file the following documents with the director of the Texas Crime Stoppers Council (Council) requesting certification under a new name (if applicable) and with the expanded geographic territory or jurisdiction:

(A) All required Texas Secretary of State, Texas Comptroller, and United States Internal Revenue Service (IRS) required forms and documentation for mergers and dissolutions, as applicable, or as specified by the director of the Council;

(B) IRS compliance documents for dissolution of a 501(c)(3) non-profit corporation and a 501(c)(3) letter authorizing the organization to operate under the new name (if applicable);

(C) Texas Secretary of State compliance documents for 501(c)(3) non-profit corporations, as applicable, or as specified by the director of the Council;

(D) Application for Continuing Certification under the new name (if applicable) and with an expanded geographic territory or jurisdiction;

(E) Statements for all financial accounts for [Copies of financial reviews of the restricted court fees accounts for] all merging organizations as required in §3.9000(f)(1) of this chapter [as required in §414.010(b), Texas Government Code; these financial reviews must be conducted by a Certified Public Accountant];

(F) Copy of board of directors membership list of the merged organization, to include contact information for board members, the law enforcement coordinator, and the executive director (if applicable);

(G) Copies of letters from community supervision and corrections departments (CSCD) detailing the amount of court fees paid to the merging organizations during the previous two years, up to and including the date of the proposed merger, under the provisions of Articles [42-12,] 37.073 and 42.152 and Chapter 42A, Texas Code of Criminal Procedure;

(H) Training certificates showing that at least one board member (if applicable), the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Council within the 12-month period preceding the merger;

(I) Copies of Crime Stoppers Program Annual [Probation Fee and Repayment] Reports for the merging organizations for the previous two calendar years as specified by §414.010(a), Texas Government Code;

(J) Copies of the minutes of the boards of directors meetings of both certified crime stoppers organizations in which the boards voted to merge their organizations; [and]

(K) Copy of a cooperative agreement or memorandum of understanding (MOU) between the merged organizations regarding the merger and a copy of each organization's minutes of the board of directors for the meeting where the agreement or MOU is approved; and

(L) Any other information or documents prescribed by the director of the Council or the Council.

(4) If the director of the Council determines that the merged organization meets all requirements within paragraphs (1) - (3) of this section, the merged organization will be presented to the Council for

determination as to whether the merged organization meets the requirements for certification at the Council's next regularly scheduled meeting.

(5) Once the Council grants certification, the merged organization may merge or consolidate the separate rewards accounts of both organizations. The merged organization will also be eligible to apply to the relevant CSCDs to receive court fees under the provisions of Articles [42-12,] 37.073[;] and 42.152 and Chapter 42A, Texas Code of Criminal Procedure.

(6) The merged organization's "Excess Funds Accounts [Account]," as described [defined] in §414.010(d) of the Texas Government Code, may only be comprised of those funds that were previously in each individual organization's "Excess Funds Accounts [Account]." [Three years from the merged organization's certification date, the merged organization may establish an "Excess Funds Account" in accordance with §414.010(d) of the Texas Government Code.]

(7) The certification is valid for a period of two years.

§3.9019. *Mergers of Non-certified Organizations to Certified Organizations.*

If a certified crime stoppers organization agrees with a non-certified crime stoppers organization to merge and form a multi-county or multi-jurisdictional (e.g. [i.e.], county and city) organization, the merged organization must apply for continuing certification, and the following procedures must be followed:

(1) The certified crime stoppers organization that wants to merge with a non-certified 501(c)(3) crime stoppers organization must have contiguous borders.

(2) The merging organizations must choose a name for the merged organization unless both organizations agree to operate under the name of one of the existing organizations.

(3) The merged organization must file the following documents with the director of the Texas Crime Stoppers Council (Council) requesting certification under a new name (if applicable) and with the expanded geographic territory or jurisdiction:

(A) All required Texas Secretary of State, Texas Comptroller, and United States Internal Revenue Service (IRS) required forms and documentation for mergers and dissolutions, as applicable, or as specified by the director of the Council;

(B) IRS compliance documents for dissolution of a 501(c)(3) non-profit corporation and a 501(c)(3) letter authorizing the organization to operate under the new name (if applicable);

(C) Texas Secretary of State compliance documents for 501(c)(3) non-profit corporations, as applicable, or as specified by the director of the Council;

(D) Application for Continuing Certification under the new name (if applicable) and with an expanded geographic territory or jurisdiction;

(E) Statements for all financial accounts [Copies of financial reviews of the restricted court fees accounts] for the certified crime stoppers organization as required in §3.9000(f)(1) of this chapter [as required in §414.010(b), Texas Government Code; these financial reviews must be conducted by a Certified Public Accountant];

(F) Statements for all financial [Copies of financial reviews of all bank] accounts showing beginning and ending balances for each of the prior two calendar years and the current year-to-date

held by the non-certified 501(c)(3) crime stoppers organization; [these financial reviews must be conducted by a Certified Public Accountant;]

(G) If the financial review establishes that at any time the non-certified 501(c)(3) crime stoppers organization was certified by the Council and received court fees under Articles [42-12,] 37.073 and 42.152 and Chapter 42A, Texas Code of Criminal Procedure, and failed to return all court fees to the state comptroller within 60 days following the loss of certification, as required by §414.010(c), Texas Government Code, a copy of the check for the outstanding court fees, made payable to the Office of the Comptroller, or other satisfactory proof, must be submitted with the application for certification;

(H) Copy of board of directors membership list of the merged organization, to include contact information for board members, the law enforcement coordinator, and executive director (if applicable);

(I) Copies of letters from the community supervision and corrections departments (CSCD) detailing the amount of court fees paid to the certified crime stoppers organization during the previous two years, up to and including the date of the proposed merger, under the provisions of Articles [42-12,] 37.073 and 42.152 and Chapter 42A, Texas Code of Criminal Procedure;

(J) Training certificates showing that at least one board member (if applicable), the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Council within the 12-month period preceding the merger;

(K) Copies of Crime Stoppers Program Annual [Probation Fee and Repayment] Reports for the certified crime stoppers organization for the previous two calendar years as specified by §414.010(a), Texas Government Code;

(L) Copies of the minutes of the boards of directors meetings of the certified crime stoppers organization and the non-certified 501(c)(3) crime stoppers organization in which the boards voted to merge their organizations; [and]

(M) Copy of a cooperative agreement or memorandum of understanding (MOU) between the merged organizations regarding the merger and a copy of each organization's minutes of the board of directors for the meeting where the agreement or MOU is approved; and

(N) Any other information or documents prescribed by the director of the Council or the Council.

(4) If the director of the Council determines that the merged organization meets all requirements of this section, the merged organization will be presented to the Council for determination as to whether the merged organization meets the requirements for certification at the Council's next regularly scheduled meeting.

(5) Once the Council grants certification, the merged organization may merge or consolidate the separate rewards accounts of the merged organizations. The merged organization also will be eligible to apply to the relevant CSCDs to receive court fees under the provisions of Articles [42-12,] 37.073[,] and 42.152 and Chapter 42A, Texas Code of Criminal Procedure.

(6) The merged organization's "Excess Funds Accounts [Account]," as described [defined] in §414.010(d) of the Texas Government Code, may only be comprised of those funds that were previously in each individual organization's "Excess Funds Accounts [Account]." [Three years from the merged organization's certification date, the merged organization may establish an "Excess Funds Account" in accordance with §414.010(d) of the Texas Government Code.]

(7) The certification is valid for a period of two years.

§3.9021. *Addition of Geographic Territories or Jurisdictions to Certified Organizations.*

(a) If a geographic territory or jurisdiction wants to join an existing certified crime stoppers organization, the organization must apply for continuing certification, and the following procedures must be followed:

(1) The geographic territory or jurisdiction seeking to join the organization [county or city] must share contiguous borders with the certified crime stoppers organization.[;]

(2) The certified crime stoppers organization and the geographical entity that is requesting to join the crime stoppers organization must choose a new name for the organization unless both parties agree to operate under the name of the existing organization.[;]

(3) The certified crime stoppers organization must file the following documents with the director of the Texas Crime Stoppers Council (Council) requesting certification under a new name (if applicable) and with an expanded geographic territory or jurisdiction:

(A) United States Internal Revenue Service (IRS) letter for a 501(c)(3) corporation authorizing the organization to operate under a new name, if applicable;

(B) Texas Secretary of State letter for a 501(c)(3) corporation authorizing the organization to operate under a new name (if applicable);

(C) Application for Continuing Certification under the new name (if applicable) and with an expanded geographic territory or jurisdiction;

(D) Statements for all financial accounts [Copies of a financial review of all bank accounts] for the certified crime stoppers organization as required in §3.9000(f)(1) of this chapter;

(E) Copy of board of directors membership list for the organization, to include contact information for board members, the law enforcement coordinator, and executive director (if applicable);

(F) Copies of letters from the community supervision and corrections departments (CSCD) detailing the amount of court fees paid to the certified organization during the previous two years, under the provisions of Articles [42-12,] 37.073 and 42.152 and Chapter 42A, Texas Code of Criminal Procedure;

(G) Training certificates showing that at least one board member (if applicable), the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Council within the 12-month period preceding the new Application for Continuing Certification;

(H) Copies of Crime Stoppers Program Annual [Probation Fee and Repayment] Reports for the certified crime stoppers organization for the previous two calendar years as specified by §414.010(a), Texas Government Code;

(I) Copy of the minutes of the board of directors meeting of the certified crime stoppers organization in which the board voted to add the new geographical entity to the territory or jurisdiction served by the crime stoppers organization; [and]

(J) Written documentation from a law enforcement agency serving the [citizens of the] geographic territory or jurisdiction showing an interest in joining an existing crime stoppers organization; and

(K) Any other information or documents prescribed by the director of the Council or the Council.

(4) If the director of the Council determines that the newly expanded organization meets all requirements listed in paragraphs (1) - (3) of this subsection, the expanded organization will be presented to the Council for determination as to whether the expanded organization meets the requirements for certification at the Council's next regularly scheduled meeting. ~~[The Council may grant expanded certification at its discretion.]~~

(5) Once the Council grants certification, the organization will be eligible to apply to the CSCDs in the newly acquired geographic territory or jurisdiction to receive court fees under the provisions of Articles ~~[42-42,]~~ 37.073 and 42.152 and Chapter 42A, Texas Code of Criminal Procedure.

(6) The certification is valid for a period of two years.

(b) If a certified or non-certified organization serves the geographic area to which a certified organization is attempting to expand, the expanding organization must send written notice to the Council and to the organization serving the geographic area to which it intends to expand of its intent to serve that area.

§3.9025. Excess Funds.

(a) A certified crime stoppers organization may establish Excess Funds Accounts in accordance with §414.010(d) of the Texas Government Code. At the conclusion of each fiscal year, if the total amount of funds in the organization's rewards accounts exceeds three times the average annual amount of funds used by the organization to pay rewards during each of the three preceding fiscal years, the organization may deposit such excess amount into its Excess Funds Accounts.

(b) The Excess Funds Accounts may only be used for expenditures for law enforcement or public safety purposes directly related to crime stoppers or juvenile justice, which means:

(1) Costs incurred in providing training to crime stoppers volunteers or law enforcement coordinators and travel costs necessary to complete that training;

(2) Costs associated with supporting volunteers in performing crime stoppers operations;

(3) Juvenile delinquency prevention or intervention programs;

(4) Promotional or marketing costs encouraging utilization of crime stoppers tip lines or recruiting volunteers for crime stoppers organizations; and

(5) Transfers to the crime stoppers assistance account in the general revenue fund or to other certified crime stoppers organizations, provided that the transferring certified crime stoppers organization ensures the receiving certified crime stoppers organization uses such funds for law enforcement or public safety purposes as described in this subsection.

(c) Pursuant to §414.010(d) of the Texas Government Code, a certified crime stoppers organization that deposits funds in an Excess Funds Account may use any interest earned on the funds in such account to pay costs incurred in administering the organization.

(d) Among other uses, a certified crime stoppers organization is not considered to be using its excess funds for a law enforcement or public safety purpose related to crime stoppers or juvenile justice if:

(1) It uses such excess funds to pay the salary or compensation of any public employee;

(2) It uses such excess funds for law enforcement equipment not directly related to crime stoppers or juvenile delinquency prevention or intervention purposes;

(3) It pays or reimburses for travel or per diem costs that exceed those allowed for state officials or employees with its excess funds;

(4) It unnecessarily retains such excess funds for an extended period of time; or

(5) It uses such excess funds for a purpose or in a manner prohibited by federal or state law.

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 December 17, 2019.

TRD-201904871

Margie Fernandez-Prew

Director, Texas Crime Stoppers Council

Office of the Governor

Earliest possible date of adoption: February 2, 2020

For further information, please call: (512) 463-1919



1 TAC §3.9010, §3.9013

The Texas Crime Stoppers Council (Council) proposes the repeal of 1 TAC §3.9010 and §3.9013, concerning reports required to be submitted by crime stoppers organizations (organizations).

EXPLANATION OF PROPOSED REPEALS

The Council's current rules at §3.9010 and §3.9013 require organizations to submit certain annual and quarterly reports. The Council proposes to repeal these rules because it is proposing in a separate notice to consolidate the reporting requirements for organizations, and will request the relevant information from the reports currently required under §3.9010 and §3.9013, in a single amended rule at §3.9011.

FISCAL NOTE

Margie Fernandez-Prew, Director of the Texas Crime Stoppers Council, has determined that for each year of the first five years in which the proposed repeals are in effect, there are no expected fiscal implications for the state or local governments as a result of the proposed repeals. Ms. Fernandez-Prew has further determined that the proposed repeals have no anticipated effect on local employment or local economies.

PUBLIC BENEFIT AND COSTS

Ms. Fernandez-Prew has also determined that for each year of the first five years in which the proposed repeals are in effect, the public benefit anticipated as a result of the proposed repeals will be to streamline and increase the efficiency in organizations' reporting. There are no anticipated economic costs to persons that are required to comply with the Council's rules as a result of the proposed repeals. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Finally, Ms. Fernandez-Prew has determined that for each year of the first five years in which the proposed repeals are in effect, the proposed repeals will have the following effect on government growth. The proposed repeals will not create or eliminate

any government programs or employee positions. Additionally, the proposed repeals will not require an increase or decrease in future legislative appropriations to the Council or change any fees paid to the Council. The proposed repeals will not create a new regulation nor will they expand or limit any existing regulation, but they will repeal two existing regulations. Furthermore, the proposed repeals will not increase or decrease the number of individuals subject to the applicability of the Council's rules. The proposed repeals are not anticipated to affect this state's economy.

SUBMITTAL OF COMMENTS

Written comments regarding the proposed repeals may be submitted to Margie Fernandez-Prew, Office of the Governor, Texas Crime Stoppers Council, P.O. Box 12428, Austin, Texas 78711 or to txcrimestoppers@gov.texas.gov with the subject line "Repeal of Council Rules." The deadline for receipt of comments is 5:00 p.m. CST on February 3, 2020. All requests for a public hearing on the proposed repeals, submitted under the Administrative Procedure Act, must be received by the Council no more than fifteen (15) days after the notice of proposed repeals in the sections have been published in the *Texas Register*.

STATUTORY AUTHORITY

The repeals are proposed under Government Code, §414.006, which provides that the Council may adopt rules to carry out its functions under that chapter.

Cross Reference to Statute: Chapter 414, Government Code.

§3.9010. *Annual Probation Fee and Repayment Report.*

§3.9013. *Quarterly Statistical Reports.*

Filed with the Office of the Secretary of State on December 17, 2019.

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Margie Fernandez-Prew

Director, Texas Crime Stoppers Council

Office of the Governor

Earliest possible date of adoption: February 2, 2020

For further information, please call: (512) 463-1919



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8201

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8201, concerning Waiver Payments to Hospitals for Uncompensated Care.

BACKGROUND AND PURPOSE

The Health and Human Services Commission received federal approval to create the Uncompensated Care (UC) pool via a waiver from section 1115 of the Social Security Act. The UC pool's role in Medicaid financing, as described in this section, is to provide supplemental payments to hospitals for the cost of uncompensated care resulting from the Medicaid shortfall and providing care to persons without insurance. As part of the UC application process, historic utilization and cost data are used to estimate the amount of the UC funds for which a hospital may be eligible. A reconciliation of actual utilization and cost data with the estimated data occurs two years after receipt of a UC payment. This process ensures a hospital did not receive more funding than allowed per its hospital specific limit.

The UC application process allowed hospitals the option to request that cost and payment data from the data year be adjusted to reflect increases or decreases in costs resulting from changes in operation or circumstances. If a hospital requested an adjustment, it would be subject to a secondary reconciliation process.

The purpose of the proposal is to eliminate the requirement that a secondary reconciliation be performed for a hospital that submitted a request for an adjustment to cost and payment data for their UC application for demonstration year (DY) 2 (October 1, 2012, to September 30, 2013). The UC applicants did not have the benefit of fully knowing the consequences of requesting an adjustment before they submitted their UC applications. The adjustments were requested prior to the effective date of the rule amendment that required a secondary reconciliation process to occur if cost and payment data adjustments were requested.

SECTION-BY-SECTION SUMMARY

The proposed amendment of §355.8201(i)(3) eliminates the secondary reconciliation process for hospitals that requested an adjustment to their UC application for DY 2 (October 1, 2012, to September 30, 2013).

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will limit existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules. Hospitals that participated in the UC program in DY 2 and requested adjustments to cost and payment data would be exempt from a secondary reconciliation process.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Charles Greenberg, Director of Hospital Finance and Waiver Programs, has determined that for each year of the first five years the rule is in effect, the public benefit is that certain hospitals will not be subject to a recoupment based on a secondary reconciliation process; thereby, allowing hospitals to retain more of its funding from DY 2 (October 1, 2012, to September 30, 2013).

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule. The proposed rule would no longer require a secondary reconciliation of actual hospital costs with uncompensated-care payments for hospital adjustments submitted to HHSC during DY 2.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 19R070" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable

rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

The amendment affects Human Resources Code Chapter 32 and Government Code Chapter 531.

§355.8201. Waiver Payments to Hospitals for Uncompensated Care.

(a) Introduction. Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver payments are available under this section for services provided between October 1, 2017 and September 30, 2019, by eligible hospitals described in subsection (c) of this section. Waiver payments to hospitals for uncompensated charity care provided beginning October 1, 2019, are described in §355.8212 of this division (relating to Waiver Payments to Hospitals for Uncompensated Charity Care). Waiver payments to hospitals must be in compliance with the Centers for Medicare & Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions and this section.

(b) Definitions.

(1) Affiliation agreement--An agreement, entered into between one or more privately-operated hospitals and a governmental entity that does not conflict with federal or state law. HHSC does not prescribe the form of the agreement.

(2) Aggregate limit--The amount of funds approved by the Centers for Medicare & Medicaid Services for uncompensated-care payments for the demonstration year that is allocated to each uncompensated-care provider pool, as described in subsection (f)(2) of this section.

(3) Anchor--The governmental entity identified by HHSC as having primary administrative responsibilities on behalf of a Regional Healthcare Partnership (RHP).

(4) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(5) Clinic--An outpatient health care facility, other than an Ambulatory Surgical Center or Hospital Ambulatory Surgical Center, that is owned and operated by a hospital but has a nine-digit Texas Provider Identifier (TPI) that is different from the hospital's nine-digit TPI.

(6) Data year--A 12-month period that is described in §355.8066 of this title (relating to Hospital-Specific Limit Methodology) and from which HHSC will compile cost and payment data to determine uncompensated-care payment amounts. This period corresponds to the Disproportionate Share Hospital data year.

(7) Delivery System Reform Incentive Payments (DSRIP)--Payments related to the development or implementation of a program of activity that supports a hospital's efforts to enhance access to health care, the quality of care, and the health of patients and families it serves. These payments are not considered patient-care revenue and are not offset against the hospital's costs when calculating the hospital-specific limit as described in §355.8066 of this title.

(8) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. This period corresponds to the Disproportionate Share Hospital program year.

(9) Disproportionate Share Hospital (DSH)--A hospital participating in the Texas Medicaid program that serves a dispropor-

tionate share of low-income patients and is eligible for additional reimbursement from the DSH fund.

(10) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(11) HHSC--The Texas Health and Human Services Commission or its designee.

(12) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(13) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(14) Large public hospital--An urban public hospital - Class one as defined in §355.8065 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology).

(15) Mid-Level Professional--Medical practitioners which include only these professions: Certified Registered Nurse Anesthetists, Nurse Practitioners, Physician Assistants, Dentists, Certified Nurse Midwives, Clinical Social Workers, Clinical Psychologists, and Optometrists.

(16) Private hospital--A hospital that is not a large public hospital as defined in paragraph (14) of this subsection, a small public hospital as defined in paragraph (21) of this subsection or a state-owned hospital.

(17) Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(18) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform. Regional Healthcare Partnerships will support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(19) RHP plan--A multi-year plan within which participants propose their portion of waiver funding and DSRIP projects.

(20) Rural hospital--A hospital enrolled as a Medicaid provider that is:

(A) located in a county with 60,000 or fewer persons according to the 2010 U.S. Census; or

(B) designated by Medicare as a Critical Access Hospital (CAH) or a Sole Community Hospital (SCH); or

(C) designated by Medicare as a Rural Referral Center (RRC) and is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget, or is located in an MSA but has 100 or fewer beds.

(21) Small public hospital--An urban public hospital - Class two or a non-urban public hospital as defined in §355.8065 of this title.

(22) Transition payment--Payments available only during the first demonstration year to hospitals that previously participated in a supplemental payment program under the Texas Medicaid State Plan. For a hospital participating in the 2012 DSH program, the maximum amount a hospital may receive in transition payments is the lesser of:

(A) the hospital's 2012 DSH room; or

(B) the amount the hospital received in supplemental payments for claims adjudicated between October 1, 2010, and September 30, 2011.

(23) Uncompensated-care application--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers.

(24) Uncompensated-care payments--Payments intended to defray the uncompensated costs of services that meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act that are provided by the hospital to Medicaid eligible or uninsured individuals.

(25) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for services, as defined by CMS.

(26) Urban rural referral center--A hospital designated by Medicare as a Rural Referral Center (RRC) that is located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget, and that has more than 100 beds.

(27) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility. A hospital that meets the requirements described in this subsection may receive payments under this section.

(1) Generally. To be eligible for any payment under this section:

(A) a hospital must have a source of public funding for the non-federal share of waiver payments; and

(B) if it is a hospital not operated by a governmental entity, it must have filed with HHSC an affiliation agreement and the documents described in clauses (i) and (ii) of this subparagraph.

(i) The hospital must certify on a form prescribed by HHSC:

(I) that it is a privately-operated hospital;

(II) that no part of any payment to the hospital under this section will be returned or reimbursed to a governmental entity with which the hospital affiliates; and

(III) that no part of any payment under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the hospital's receipt of the supplemental funds.

(ii) The governmental entity that is party to the affiliation agreement must certify on a form prescribed by HHSC:

(I) that the governmental entity has not received and has no agreement to receive any portion of the payments made to any hospital that is party to the agreement;

(II) that the governmental entity has not entered into a contingent fee arrangement related to the governmental entity's participation in the waiver program;

(III) that the governmental entity adopted the conditions described in the certification form prescribed by or otherwise approved by HHSC pursuant to a vote of the governmental entity's governing body in a public meeting preceded by public notice published in accordance with the governmental entity's usual and customary practices or the Texas Open Meetings Act, as applicable; and

(IV) that all affiliation agreements, consulting agreements, or legal services agreements executed by the governmental entity related to its participation in this waiver payment program are available for public inspection upon request.

(iii) Submission requirements.

(I) Initial submissions. The parties must initially submit the affiliation agreements and certifications described in this subsection to the HHSC Rate Analysis Department on the earlier of the following occurrences after the documents are executed:

(-a-) The date the hospital submits the uncompensated-care application that is further described in paragraph (2) of this subsection; or

(-b-) Thirty days before the projected deadline for completing the IGT for the first payment under the affiliation agreement. The projected deadline for completing the IGT is posted on HHSC Rate Analysis' website for each payment under this section.

(II) Subsequent submissions. The parties must submit revised documentation as follows:

(-a-) When the nature of the affiliation changes or parties to the agreement are added or removed, the parties must submit the revised affiliation agreement and related hospital and governmental entity certifications.

(-b-) When there are changes in ownership, operation, or provider identifiers, the hospital must submit a revised hospital certification.

(-c-) The parties must submit the revised documentation thirty days before the projected deadline for completing the IGT for the first payment under the revised affiliation agreement. The projected deadline for completing the IGT is posted on HHSC Rate Analysis' website for each payment under this section.

(III) A hospital that submits new or revised documentation under subclause (I) or (II) of this clause must notify the Anchor of the RHP in which the hospital participates.

(IV) The certification forms must not be modified except for those changes approved by HHSC prior to submission.

(-a-) Within 10 business days of HHSC Rate Analysis receiving a request for approval of proposed modifications, HHSC will approve, reject, or suggest changes to the proposed certification forms.

(-b-) A request for HHSC approval of proposed modifications to the certification forms will not delay the submission deadlines established in this clause.

(V) A hospital that fails to submit the required documentation in compliance with this subparagraph will not receive a payment under this section.

(2) Uncompensated-care payments. For a hospital to be eligible to receive uncompensated-care payments, in addition to the requirements in paragraph (1) of this subsection, the hospital must:

(A) submit to HHSC an uncompensated-care application for the demonstration year, as is more fully described in subsection (g)(1) of this section, by the deadline specified by HHSC;

(B) submit to HHSC documentation of:

(i) its participation in an RHP; or

(ii) approval from CMS of its eligibility for uncompensated-care payments without participation in an RHP;

(C) be actively enrolled as a Medicaid provider in the State of Texas at the beginning of the demonstration year; and

(D) have submitted, and be eligible to receive payment for, a Medicaid fee-for-service or managed-care inpatient or outpatient claim for payment during the demonstration year.

(3) Changes that may affect eligibility for uncompensated-care payments.

(A) If a hospital closes, loses its license, loses its Medicare or Medicaid eligibility, withdraws from participation in an RHP, or files bankruptcy before receiving all or a portion of the uncompensated-care payments for a demonstration year, HHSC will determine the hospital's eligibility to receive payments going forward on a case-by-case basis. In making the determination, HHSC will consider multiple factors including whether the hospital was in compliance with all requirements during the demonstration year and whether it can satisfy the requirement to cooperate in the reconciliation process as described in subsection (i) of this section.

(B) A hospital must notify HHSC Rate Analysis Department in writing within 30 days of the filing of bankruptcy or of changes in ownership, operation, licensure, Medicare or Medicaid enrollment, or affiliation that may affect the hospital's continued eligibility for payments under this section.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to timely receipt by HHSC of public funds from a governmental entity.

(e) Payment frequency. HHSC will distribute waiver payments on a schedule to be determined by HHSC and posted on HHSC's website.

(f) Funding limitations.

(1) Payments made under this section are limited by the maximum aggregate amount of funds allocated to the provider's uncompensated-care pool for the demonstration year. If payments for uncompensated care for an uncompensated-care pool attributable to a demonstration year are expected to exceed the aggregate amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool as described in subsection (g)(5) of this section.

(2) HHSC will establish the following seven uncompensated-care pools: a state-owned hospital pool; a large public hospital pool; a small public hospital pool; a private hospital pool; a physician group practice pool; a governmental ambulance provider pool; and a publicly owned dental provider pool as follows:

(A) The state-owned hospital pool.

(i) The state-owned hospital pool funds uncompensated-care payments to state-owned teaching hospitals, state-owned IMDs and state chest hospitals.

(ii) HHSC will determine the allocation for this pool at an amount less than or equal to the total annual maximum uncompensated-care payment amount for these hospitals as calculated in subsection (g)(2) of this section.

(B) Set-aside amounts. HHSC will determine set-aside amounts as follows:

(i) For small public hospitals:

(I) that are also rural hospitals:

(-a-) Divide the amount of funds approved by CMS for uncompensated-care payments for the demonstration year by the amount of funds approved by CMS for uncompensated-care payments for the 2013 demonstration year and round the result to four decimal places.

(-b-) Determine the small rural public hospital set-aside amount by multiplying the value from item (-a-) of this subclause by the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all small rural public hospitals that are eligible to receive uncompensated-care payments under this section and that meet the definition of a small public hospital from subsection (b)(21) of this section. Truncate the resulting value to zero decimal places.

(II) that are also urban RRCs, for DY 7 only, determine the small public urban RRC set-aside amount by multiplying by 54% the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all small public urban RRCs that are eligible to receive uncompensated-care payments under this section and that meet the definition of an urban RRC from subsection (b)(26) of this section. Truncate the resulting value to zero decimal places.

(ii) For private hospitals:

(I) that are also rural hospitals:

(-a-) Divide the amount of funds approved by CMS for uncompensated-care payments for the demonstration year by the amount of funds approved by CMS for uncompensated-care payments for the 2013 demonstration year and round the result to four decimal places.

(-b-) Determine the private rural hospital set-aside amount by multiplying the value from item (-a-) of this subclause by the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all private rural hospitals that are eligible to receive uncompensated-care payments under this section and that meet the definition of a small public hospital from subsection (b)(21) of this section. Truncate the resulting value to zero decimal places.

(II) that are also urban RRCs, for DY 7 only, determine the private urban RRC set-aside amount by multiplying by 54% the sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all private urban RRCs that are eligible to receive uncompensated-care payments under this section and that meet the definition of an urban RRC from subsection (b)(26) of this section. Truncate the resulting value to zero decimal places.

(iii) Determine the total set-aside amount by summing the results of subclauses (i)(I), (i)(II), (ii)(I), and (ii)(II) of this subparagraph.

(C) Non-state-owned provider pools. HHSC will allocate the remaining available uncompensated-care funds, if any, and the set-aside amount among the non-state-owned provider pools as described in this subparagraph. The remaining available uncompensated-care funds equal the amount of funds approved by CMS for uncompensated-care payments for the demonstration year less the sum of funds allocated to the state-owned hospital pool under subparagraph (A) of this paragraph and the set-aside amount from subparagraph (B) of this paragraph.

(i) HHSC will allocate the funds among non-state-owned provider pools based on the following amounts:

(I) Large public hospitals:

(-a-) The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all large public hospitals, as defined in subsection (b)(14) of this section, eligible to receive uncompensated-care payments under this section; plus

(-b-) An amount equal to the IGTs transferred to HHSC by large public hospitals to support DSH payments to themselves and private hospitals for the same demonstration year.

(II) Small public hospitals:

(-a-) The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all non-rural and non-urban RRC small public hospitals, as defined in subsection (b)(21) of this section, eligible to receive uncompensated-care payments under this section; plus

(-b-) An amount equal to the IGTs transferred to HHSC by small public hospitals to support DSH payments to themselves for Pass One and Pass Two payments for the same demonstration year.

(III) Private hospitals: The sum of the interim hospital specific limits from subsection (g)(2)(A) of this section for all non-rural and non-urban RRC private hospitals, as defined in subsection (b)(16) of this section, eligible to receive uncompensated-care payments under this section.

(IV) Physician group practices: The sum of the unreimbursed uninsured costs and Medicaid shortfall for physician group practices, as described in §355.8202(g)(2)(A) of this title (relating to Waiver Payments to Physician Group Practices for Uncompensated Care).

(V) Governmental ambulance providers: The sum of the uncompensated care costs multiplied by the federal medical assistance percentage (FMAP) in effect during the cost reporting period for governmental ambulance providers, as described in §355.8600 of this title (relating to Reimbursement Methodology for Ambulance Services). Estimated amounts may be used if actual data is not available at the time calculations are performed.

(VI) Publicly-owned dental providers: The sum of the total allowable cost minus any payments for publicly owned dental providers, as described in §355.8441 of this title (relating to Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services). Estimated amounts may be used if actual data is not available at the time calculations are performed.

(ii) HHSC will sum the amounts calculated in clause (i) of this subparagraph.

(iii) HHSC will calculate the aggregate limit for each non-state-owned provider pool as follows:

(I) To determine the large public hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds, from this subparagraph, by the amount calculated in clause (i)(I) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(II) To determine the small public hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(II) of this subparagraph;

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places; and

(-c-) add the result from item (-b-) of this subclause to the amount calculated in subparagraph (B)(ii) of this paragraph.

(III) To determine the private hospital pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(III) of this subparagraph;

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places; and

(-c-) add the result from item (-b-) of this subclause to the amount calculated in subparagraph (B)(iii) of this paragraph.

(IV) To determine the physician group practice pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(IV) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(V) To determine the maximum aggregate amount of the estimated uncompensated care costs for all governmental ambulance providers:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(V) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(VI) To determine the publicly owned dental providers pool aggregate limit:

(-a-) multiply the remaining available uncompensated-care funds from this subparagraph by the amount calculated in clause (i)(VI) of this subparagraph; and

(-b-) divide the result from item (-a-) of this subclause by the amount calculated in clause (ii) of this subparagraph and truncate to zero decimal places.

(3) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section. If sufficient funds are not available for all payments for which a hospital is eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

(g) Uncompensated-care payment amount.

(1) Application.

(A) Cost and payment data reported by the hospital in the uncompensated-care application is used to calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection.

(B) Unless otherwise instructed in the application, the hospital must base the cost and payment data reported in the application on its applicable as-filed CMS 2552 Cost Report(s) For Electronic Filing Of Hospitals corresponding to the data year and must comply with the application instructions or other guidance issued by HHSC.

(i) When the application requests data or information outside of the as-filed cost report(s), the hospital must provide all requested documentation to support the reported data or information.

(ii) For a new hospital, the cost and payment data period may differ from the data year, resulting in the eligible uncompensated costs based only on services provided after the hospital's Medicaid enrollment date. HHSC will determine the data period in such situations.

(2) Calculation. A hospital's annual maximum uncompensated-care payment amount is the sum of the components below. In no case can the sum of payments made to a hospital for a demonstration year for DSH and uncompensated-care payments, less the payments

described in paragraph (3) of this subsection, exceed a hospital's specific limit as determined in §355.8066 of this title after modifications to reflect the adjustments described in paragraph (4) of this subsection.

(A) The interim hospital specific limit, calculated as described in §355.8066 of this title, except that an IMD may not report cost and payment data in the uncompensated-care application for services provided during the data year to Medicaid-eligible and uninsured patients ages 21 through 64, less any payments to be made under the DSH program for the same demonstration year, calculated as described in §355.8065 of this title;

(B) Other eligible costs for the data year, as described in paragraph (3) of this subsection;

(C) Cost and payment adjustments, if any, as described in paragraph (4) of this subsection; and

(D) For each hospital eligible for payments under subsection (f)(2)(C)(i)(I) of this section, the amount transferred to HHSC by that hospital's affiliated governmental entity to support DSH payments for the same demonstration year.

(3) Other eligible costs.

(A) In addition to cost and payment data that is used to calculate the hospital-specific limit, as described in §355.8066 of this title, a hospital may also claim reimbursement under this section for uncompensated care, as specified in the uncompensated-care application, that is related to the following services provided to Medicaid-eligible and uninsured patients:

(i) direct patient-care services of physicians and mid-level professionals;

(ii) pharmacy services; and

(iii) clinics.

(B) The payment under this section for the costs described in subparagraph (A) of this paragraph are not considered inpatient or outpatient Medicaid payments for the purpose of the DSH audit described in §355.8065 of this title.

(4) Adjustments. When submitting the uncompensated-care application, hospitals may request that cost and payment data from the data year be adjusted to reflect increases or decreases in costs resulting from changes in operations or circumstances.

(A) A hospital:

(i) may request that costs not reflected on the as-filed cost report, but which would be incurred for the demonstration year, be included when calculating payment amounts;

(ii) may request that costs reflected on the as-filed cost report, but which would not be incurred for the demonstration year, be excluded when calculating payment amounts.

(B) Documentation supporting the request must accompany the application. HHSC will deny a request if it cannot verify that costs not reflected on the as-filed cost report will be incurred for the demonstration year.

(C) In addition to being subject to the reconciliation described in subsection (i)(1) of this section which applies to all uncompensated-care payments for all hospitals, uncompensated-care payments for hospitals that submitted a request as described in subparagraph (A)(i) of this paragraph that impacted the interim hospital-specific limit described in paragraph (2)(A) of this subsection will be subject to the reconciliation described in subsection (i)(2) of this section.

(D) Notwithstanding the availability of adjustments impacting the interim hospital-specific limit described in this paragraph, no adjustments to the interim hospital-specific limit will be considered for purposes of Medicaid DSH payment calculations described in §355.8065 of this title.

(5) Reduction to stay within uncompensated-care pool aggregate limits. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year for any uncompensated-care pool described in subsection (f)(2) of this section, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the pool to exceed the aggregate limit for the pool and will reduce the maximum uncompensated-care payment amounts providers in the pool are eligible to receive for that period as required to remain within the pool aggregate limit.

(A) Calculations in this paragraph will be applied to each of the uncompensated-care pools separately.

(B) HHSC will calculate the following data points:

(i) For each provider, prior period payments to equal prior period uncompensated-care payments for the demonstration year.

(ii) For each provider, a maximum uncompensated-care payment for the payment period to equal the sum of:

(I) the portion of the annual maximum uncompensated-care payment amount calculated for that provider (as described in this section and the sections referenced in subsection (f)(2)(C) of this section) that is attributable to the payment period; and

(II) the difference, if any, between the portions of the annual maximum uncompensated-care payment amounts attributable to prior periods and the prior period payments calculated in clause (i) of this subparagraph.

(iii) The cumulative maximum payment amount to equal the sum of prior period payments from clause (i) of this subparagraph and the maximum uncompensated-care payment for the payment period from clause (ii) of this subparagraph for all members of the pool combined.

(iv) A pool-wide total maximum uncompensated-care payment for the demonstration year to equal the sum of all pool members' annual maximum uncompensated-care payment amounts for the demonstration year from paragraph (2) of this subsection.

(v) A pool-wide ratio calculated as the pool aggregate limit from subsection (f)(2) of this section divided by the pool-wide total maximum uncompensated-care payment amount for the demonstration year from clause (iv) of this subparagraph.

(C) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is less than the aggregate limit for the pool, each provider in the pool is eligible to receive their maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph without any reduction to remain within the pool aggregate limit.

(D) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is more than the aggregate limit for the pool, HHSC will calculate a revised maximum uncompensated-care payment for the payment period for each provider in the pool as follows:

(i) HHSC will calculate a capped payment amount equal to the product of the provider's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2)

of this subsection and the pool-wide ratio calculated in subparagraph (B)(v) of this paragraph.

(ii) If the payment period is not the final payment period for the demonstration year, the revised maximum uncompensated-care payment for the payment period equals the lesser of:

(I) the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph; or

(II) the difference between the capped payment amount from clause (i) of this subparagraph and the prior period payments from subparagraph (B)(i) of this paragraph.

(iii) If the payment period is the final payment period for the demonstration year:

(I) HHSC will calculate an IGT-supported maximum uncompensated-care payment for the payment period equal to the amount of the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph that is supported by an IGT commitment.

(-a-) For hospitals and physician group practices, HHSC will obtain from each RHP anchor a current breakdown of IGT commitments from all governmental entities, including governmental entities outside of the RHP, that will be providing IGTs for uncompensated-care payments for each hospital and physician group practice within the RHP that is eligible for such payments for the payment period.

(-b-) Ambulance and dental providers will be assumed to have commitments for 100 percent of the non-federal share of their payments. The non-federal share for ambulance providers is provided through certified public expenditures (CPEs); for ambulance providers, references to IGTs in this subsection should be read as references to CPEs.

(II) HHSC will calculate an IGT-supported maximum uncompensated-care payment for the demonstration year to equal the IGT-supported maximum uncompensated-care payment for the payment period from subclause (I) of this clause plus the provider's prior period payments from subparagraph (B)(i) of this paragraph.

(III) For providers with an IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause that is less than or equal to their capped payment amount from clause (i) of this subparagraph, the provider's revised maximum uncompensated-care payment for the payment period equals the IGT-supported maximum uncompensated-care payment amount for the payment period from subclause (I) of this clause. For these providers, the difference between their capped payment amount from clause (i) of this subparagraph and their IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause is their unfunded cap room.

(IV) HHSC will sum all unfunded cap room from subclause (III) of this clause to determine the total unfunded cap room for the pool.

(V) For providers with an IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause that is greater than their capped payment amount from clause (i) of this subparagraph, the provider's revised maximum uncompensated-care payment amount for the payment period is calculated as follows:

(-a-) For each provider, HHSC will calculate an overage amount to equal the difference between the IGT-supported maximum uncompensated-care payment amount for the demonstration year from subclause (II) of this clause and their capped payment

amount for the demonstration year from clause (i) of this subparagraph. Unfunded cap room from subclause (IV) of this clause will be distributed to these providers based on each provider's overage as a percentage of the pool-wide overage.

(-b-) For each provider, the provider's revised maximum uncompensated-care payment amount for the payment period is equal to the sum of its capped payment amount from clause (i) of this subparagraph and its portion of its pool's unfunded cap room from item (-a-) of this subclause less its prior period payments from subparagraph (B)(i) of this paragraph.

(E) Once reductions to ensure that uncompensated-care expenditures do not exceed the aggregate limit for the demonstration year for the pool are calculated, HHSC will not re-calculate the resulting payments for any provider for the demonstration year, including if the IGT commitments upon which the reduction calculations were based are different than actual IGT amounts.

(F) Notwithstanding the calculations described in subparagraphs (A) - (E) of this paragraph, if the payment period is the final payment period for the demonstration year, to the extent the payment is supported by IGT, each rural hospital is guaranteed a payment at least equal to its interim hospital specific limit from paragraph (2)(A) of this subsection multiplied by the value from subsection (f)(2)(B)(i)(I) of this section for the demonstration year less any prior period payments. If this guarantee will cause payments for a pool to exceed the aggregate pool limit, the reduction required to stay within the pool limit will be distributed proportionally across all non-rural and non-urban RRC providers in the pool based on each provider's resulting payment from subparagraphs (A) - (E) of this paragraph as compared to the payments to all non-rural and non-urban RRC hospitals in the pool resulting from subparagraphs (A) - (E) of this paragraph.

(G) Notwithstanding the calculations described in subparagraphs (A) - (E) of this paragraph, if the payment period is the final payment period for the demonstration year, to the extent the payment is supported by IGT, each urban RRC is guaranteed a payment at least equal to its interim hospital specific limit from paragraph (2)(A) of this subsection multiplied by 54% for the demonstration year less any prior period payments. If this guarantee will cause payments for a pool to exceed the aggregate pool limit, the reduction required to stay within the pool limit will be distributed proportionally across all non-rural and non-urban RRC providers in the pool based on each provider's resulting payment from subparagraphs (A) - (E) of this paragraph as compared to the payments to all non-rural and non-urban RRC hospitals in the pool resulting from subparagraphs (A) - (E) of this paragraph.

(6) Prohibition on duplication of costs. Eligible uncompensated-care costs cannot be reported on multiple uncompensated-care applications, including uncompensated-care applications for other programs. Reporting on multiple uncompensated-care applications is duplication of costs.

(7) Advance payments.

(A) In a demonstration year in which uncompensated-care payments will be delayed pending data submission or for other reasons, HHSC may make advance payments to hospitals that meet the eligibility requirements described in subsection (c)(2) of this section and submitted an acceptable uncompensated-care application for the preceding demonstration year from which HHSC calculated an annual maximum uncompensated-care payment amount for that year.

(B) The amount of the advance payments will be a percentage, to be determined by HHSC, of the annual maximum uncompensated-care payment amount calculated by HHSC for the preceding demonstration year.

(C) Advance payments are considered to be prior period payments as described in paragraph (5)(B)(i) of this subsection.

(D) A hospital that did not submit an acceptable uncompensated-care application for the preceding demonstration year is not eligible for an advance payment.

(E) If a partial year uncompensated-care application was used to determine the preceding demonstration year's payments, data from that application may be annualized for use in computation of an advance payment amount.

(h) Payment methodology.

(1) Notice. Prior to making any payment described in subsection (g) of this section, HHSC will give notice of the following information:

(A) the payment amount for the payment period (based on whether the payment is made quarterly, semi-annually, or annually);

(B) the maximum IGT amount necessary for a hospital to receive the amount described in subparagraph (A) of this paragraph; and

(C) the deadline for completing the IGT.

(2) Payment amount. The amount of the payment to a hospital will be determined based on the amount of funds transferred by the affiliated governmental entity or entities as follows:

(A) If the governmental entity transfers the maximum amount referenced in paragraph (1) of this subsection, the hospital will receive the full payment amount calculated for that payment period.

(B) If a governmental entity does not transfer the maximum amount referenced in paragraph (1) of this subsection, HHSC will determine the payment amount to each hospital owned by or affiliated with that governmental entity as follows:

(i) At the time the transfer is made, the governmental entity notifies HHSC, on a form prescribed by HHSC, of the share of the IGT to be allocated to each hospital owned by or affiliated with that entity and provides the non-federal share of uncompensated-care payments for each entity with which it affiliates in a separate IGT transaction; or

(ii) In the absence of the notification described in clause (i) of this subparagraph, each hospital owned by or affiliated with the governmental entity will receive a portion of its payment amount for that period, based on the hospital's percentage of the total payment amounts for all hospitals owned by or affiliated with that governmental entity.

(C) For a hospital that is affiliated with multiple governmental entities, in the event those governmental entities transfer more than the maximum IGT amount that can be provided for that hospital, HHSC will calculate the amount of IGT funds necessary to fund the hospital to its payment limit and refund the remaining amount to the governmental entities identified by HHSC.

(3) Final payment opportunity. Within payments described in this section, a governmental entity that does not transfer the maximum IGT amount described in paragraph (1) of this subsection during a demonstration year will be allowed to fund the remaining payments at the time of the final payment for that demonstration year. The IGT will be applied in the following order:

(A) To the final payment up to the maximum amount;

(B) To remaining balances for prior payment periods in the demonstration year.

(i) Reconciliation. HHSC will reconcile actual costs incurred by the hospital for the demonstration year with uncompensated-care payments, if any, made to the hospital for the same period:

(1) If a hospital received payments in excess of its actual costs, the overpaid amount will be recouped from the hospital, as described in subsection (j) of this section.

(2) If a hospital received payments less than its actual costs, and if HHSC has available waiver funding for the demonstration year in which the costs were accrued, the hospital may receive reimbursement for some or all of those actual documented unreimbursed costs.

(3) Except in demonstration year 2 (October 1, 2012, to September 30, 2013), if [H] a hospital submitted a request as described in subsection (g)(4)(A)(i) of this section that impacted its interim hospital-specific limit, that hospital will be subject to an additional reconciliation as follows:

(A) HHSC will compare the hospital's adjusted interim hospital-specific limit from subsection (g)(4)(A)(i) of this section for the demonstration year to its final hospital-specific limit as described in §355.8066(c)(2) of this title for the demonstration year.

(B) If the final hospital-specific limit is less than the adjusted interim hospital-specific limit, HHSC will recalculate the hospital's uncompensated-care payment for the demonstration year substituting the final hospital-specific limit for the adjusted interim hospital-specific limit with no other changes to the data used in the original calculation of the hospital's uncompensated-care payment other than any necessary reductions to the original IGT amount and will recoup any payment received by the hospital that is greater than the recalculated uncompensated-care payment. Recouped funds may be redistributed to other hospitals that received payments less than their actual costs.

(4) Each hospital that received an uncompensated-care payment during a demonstration year must cooperate in the reconciliation process by reporting its actual costs and payments for that period on the form provided by HHSC for that purpose, even if the hospital closed or withdrew from participation in the uncompensated-care program. If a hospital fails to cooperate in the reconciliation process, HHSC may recoup the full amount of uncompensated-care payments to the hospital for the period at issue.

(j) Recoupment.

(1) In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a hospital's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the hospital will be returned to the entity that owns or is affiliated with the hospital.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Chapter 403, Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the hospital against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the hospital's receipt of HHSC's written notice of recoupment, the hospital has not paid the full amount of the recoupment or entered into a written agreement

with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the hospital until HHSC has recovered an amount equal to the amount overpaid or disallowed.

(k) Penalty for failure to complete Category 4 reporting requirements for Regional Healthcare Partnerships. Hospitals must comply with all Category 4 reporting requirements set out in Chapter 354 of this title, Subchapter D (relating to Texas Healthcare Transformation and Quality Improvement Program). If a hospital fails to complete required Category 4 reporting measures by the last quarter of a demonstration year:

(1) the hospital will forfeit its uncompensated-care payments for that quarter; or

(2) the hospital may request from HHSC a six-month extension from the end of the demonstration year to report any outstanding Category 4 measures.

(A) The fourth-quarter payment will be made upon completion of the outstanding required Category 4 measure reports within the six-month period.

(B) A hospital may receive only one six-month extension to complete required Category 4 reporting for each demonstration year.

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

Filed with the Office of the Secretary of State on December 18, 2019.

TRD-201904901

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 2, 2020

For further information, please call: (512) 424-6863



TITLE 7. BANKING AND SECURITIES

PART 8. JOINT FINANCIAL REGULATORY AGENCIES

CHAPTER 155. PAYOFF STATEMENTS

SUBCHAPTER A. REGISTRATION

7 TAC §155.2

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending (SML), after reviewing and considering for re-adoption, revision, or repeal, Chapter 155 of Texas Administrative Code, Title 7, in its entirety (7 TAC §§155.1 - 155.3). The commission proposes an amendment to the form found at 7 TAC §155.2(c)(6).

Chapter 155 concerns payoff statements. Non-substantive formatting amendments are proposed to the form to make the version found in the *Texas Register* more user friendly and consistent with the version found on the Department of Savings and Mortgage Lending's website.

The review was conducted pursuant to Government Code, §2001.039 and in coordination with the Texas Department of

Banking (DOB) and the Office of the Consumer Credit Commissioner (OCCC).

SML, OCCC, and DOB held a stakeholder meeting and webinar regarding the rule review. SML, OCCC, and DOB received five informal written precomments, none of which proposed making any changes to the rules under review.

During the review, SML, OCCC, and DOB determined that the reasons for initially adopting the sections under review continue to exist, as the statute requiring it still exists, and Chapter 155 should be readopted with only a minor formatting amendment to the form found at 7 TAC §155.2(c)(6).

Ernest Garcia of SML, Christina Cuellar Hoke of the OCCC, and Jesse Moore of the DOB, have determined that for the first five-year period the proposed amended form is in use, there will be no fiscal implications for state or local government as a result of administering the amended optional form.

Ernest Garcia of SML, Huffman Lewis of the OCCC, and Jesse Moore of the DOB, have determined that for each year of the first five years the amended form is in use, the public benefits anticipated as a result of amending the form will be that the version found in the *Texas Register* will be more user friendly and consistent with the version found on the Department of Savings and Mortgage Lending's website. Further, that there is no anticipated cost to persons who are required to comply with the rule changes as proposed, and there will be no adverse economic effect on rural communities or small or micro-businesses. These determinations are in part based on stakeholder feedback indicating that a substantially similar form is already in use and/or a substantially similar fillable form is currently in use and available on SML's website. SML, OCCC, and DOB invite comments from stakeholders who believe there will be cost associated with the proposed amended form.

During the first five years the proposed amended form will be in use, the form will not create or eliminate a government program.

Implementation of the proposed amended form will not require the creation of new employee positions or the elimination of existing employee positions.

Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to SML, the OCCC, or DOB because they are self-directed, semi-independent agencies that do not receive legislative appropriations. The proposed rule changes will not require an increase or decrease in fees paid to the agencies.

The proposed amended form creates a new regulation by making minor formatting amendments to an existing form. The proposed amended form does not expand, limit, or repeal an existing regulation. The proposed amended form does not increase or decrease the number of individuals subject to the rules' applicability. The agencies do not anticipate that the proposed amended form will have an effect on the state's economy, or any local economies.

To be considered, comments on the proposed amended form must be submitted in writing to Ernest C. Garcia, General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments to the form are proposed under Finance Code §343.106(b), which provides that the Finance Commission shall

adopt rules governing requests by title insurance companies for payoff information from mortgage servicers related to home loans and the provision of that information, including rules prescribing a standard payoff statement form.

Other statutes affected by the proposal are found in Finance Code Chapter 343.

§155.2 Payoff Statement Form.

(a) Requests made pursuant to this chapter shall be in writing and submitted to a mortgage servicer by mail, electronic mail or facsimile. If the mortgage servicer has designated a specific physical address; electronic mail address; and/or a specific representative to receive requests made pursuant to this chapter, then requests shall be submitted in accordance with such designation. Requests for a payoff statement made pursuant to this chapter shall, at a minimum, include the following:

- (1) Name of the mortgagor;
- (2) Physical address of the underlying collateral of the loan, or a legal description of the property; and
- (3) Proposed closing date of the loan.

(b) Upon receipt of a valid request made under subsection (a) of this section, a mortgage servicer shall provide, in writing, by mail or electronic mail, the payoff statement information for the home loan specified in the request which must be provided on the prescribed payoff statement form, Figure: 7 TAC §155.2(c)(6), or in a substantially similar format which contains all elements not indicated as optional on the prescribed payoff statement form. The statement must include the following information:

- (1) The proposed closing date for the sale or other transaction, as provided in the request made pursuant to this chapter;
- (2) The payoff amount that is valid through the proposed closing date; and
- (3) Sufficient information to identify the loan for which the payoff information is provided.

(c) If applicable, the payoff statement may contain:

- (1) Adjustable rate mortgage information;
- (2) Per diem amount;
- (3) Late charge information;
- (4) Escrow disbursement information;
- (5) A statement regarding which party is responsible for the release of lien; and
- (6) Other information necessary to provide a clear and concise payoff statement.

Figure: 7 TAC §155.2(c)(6)

[Figure: 7 TAC §155.2(c)(6)]

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 December 17, 2019.

TRD-201904851



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 82. BARBERS

16 TAC §§82.10, 82.20 - 82.22, 82.28, 82.52, 82.70, 82.72, 82.74, 82.77, 82.80, 82.120

The Texas Department of Licensing and Regulation (Department) proposes amendment to existing rules at 16 Texas Administrative Code (TAC), Chapter 82, §§82.10; 82.20 - 82.22; 82.28; 82.52; 82.70; 82.72; 82.74; 82.80; 82.120; and new rule §82.77, regarding the Barbers Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 82 implement Texas Occupations Code, Chapter 1601, Barbers and Chapter 1603, Regulations of Barbering and Cosmetology.

The proposed rules implement necessary changes as required by House Bill (HB) 2847, 86th Legislature, Regular Session (2019).

As required by HB 2847, the proposed rules increase the inspection cycle for establishments that provide certain services and provide for the regulation of remote service businesses and digitally prearranged remote services.

The proposed rules also include recommendations from the Advisory Board's workgroups to reduce regulatory burdens by removing outdated requirements for schools and provide more clarity to the industry by using more updated and standardized terminology.

The proposed rules include a recommendation from the Advisory Board to lower the number of hours required to obtain a Class A Barber license from 1,500 to 1,000 hours.

The proposed rules were presented to and discussed by the Advisory Board on Barbering (Advisory Board) at its meeting on November 4, 2019. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §82.10 by adding definitions for "Digital Network," "Digitally Prearranged Remote Service," and "Remote Service Business." The proposed rules update terminology by removing the incorrect term of "reciprocity" and replacing it with the term "substantial equivalence."

The proposed rules amend §82.20 by adding the term "standards" after "curriculum" for clarity, providing for the orderly transition from 1,500 to 1,000-hours for students and schools, and establishing requirements for individuals to notify the Depart-

ment of their intention to operate a remote service business as established by HB 2847.

The proposed rules amend §82.21 by removing the term "curriculum" for clarity, allowing for examinees to have the option of using a live model or mannequin to perform their practical exam; and removing requirements for 1,500-hour programs.

The proposed rules amend §82.22 by establishing requirements for barbershops, specialty shops, dual shops, mobile shops, mini-barbershops, or mini-dual shops to notify the Department of their intention to operate a remote service business as established by HB 2847.

The proposed rules amend §82.28 by updating incorrect use of the term "reciprocity" with the term "substantial equivalence" and lowers the number of hours required for training from 1,500 to 1,000 hours for substantial equivalence.

The proposed rules amend §82.52 by increasing the inspection cycle for certain barbershops, specialty shops, dual shops, mini-barbershops, and mini-dual shops from two to four years. Barbershops, specialty shops, dual shops, mini-barbershops, and mini-dual shops that practice: treating a person's nails by cutting, trimming, polishing, tinting, coloring, cleansing, manicuring, or pedicuring; or attaching false nails; or massaging, cleansing, treating, or beautifying a person's hands will remain on a two-year inspection cycle.

The proposed rules amend §82.70 by clarifying that a licensee performing digitally prearranged remote services is allowed to perform these services at a location other than a licensed facility if the appointment is made through a remote service business's digital network. These proposed rules implement HB 2847.

The proposed rules amend §82.72 by updating language and equipment requirements for barber schools by removing outdated requirements to remove regulatory burdens and provide clarity.

The proposed rules amend §82.74 by rewording subsection (a) for clarity and correctly referencing "class" days instead of "barber curriculum" days and changes the required hours for out-of-state transfer students from 1,500 to 1,000.

The proposed rules add new §82.77 regarding remote service business responsibilities. The proposed new rule outlines the requirements for operating a remote service business and the digitally prearranged remote services that may or may not be performed by a licensee working for a remote service business. This new rule implements HB 2847.

The proposed rules amend §82.80 by replacing the incorrect use of the term "reciprocity" with "substantial equivalence."

The proposed rules amend §82.120 by adding the term "standards" after "curriculum" for clarity, lowering the number of curriculum hours required for a Class A Barber license from 1,500 to 1,000, and updating the curriculum standards for both Class A Barber private and public post-secondary barber schools and for high schools.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

The proposed rules impact barbering services but do not impact program costs. The reduction in the number of curriculum hours for the Class A Barber license will require recertification of the curriculum at each school that chooses to lower the hours taught. These recertifications can be accomplished with current agency resources so no increase in costs to the State is necessary. The establishment of remote service businesses and the change of the inspection cycle for certain barbershops, specialty shops, dual shops, mini-barbershops, and mini-dual shops from two years to four years will not cause enough extra duties for the Department which would necessitate an increase in personnel or resources and thus an increase in costs or cause a reduction of costs to the state.

The remaining activities required to implement the proposed rule changes are one-time program administration tasks that are routine in nature, such as modifying or revising publications, forms or website information, which will not result in an increase in program costs. Additionally, the proposed changes will not result in a reduction in costs to the state because these proposed rules do not decrease the need for personnel or resources.

The proposed rule changes have no direct impact on local governments. Local governments do not regulate the Barbering profession and industry.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

The proposed rules for the reduction of hours required for a Class A Barber license will not affect the enrollment in barber schools and thus not affect the number of barber schools and cause a loss in revenue to the State.

The change in the frequency of periodic inspections for barber-shops, specialty shops, dual shops, mini-barbershops, and mini-dual shops will not result in a loss in revenue because these establishments do not pay a fee for inspections. There is no anticipated loss in State revenue, as the proposed rules do not amend or impact the fees assessed by the licensing program. The proposed rules will not increase revenue because there are no new licenses or fees being created by the proposed rules. Licensees who provide remote services will not have to pay any fees to the State to perform those services, therefore state revenue is not affected by the proposed rules for remote services. Additionally, there will be no fee charged by TDLR for submission of an existing Class A Barber curriculum for recertification because of the proposed reduction of hours.

There is no anticipated revenue loss or increase in revenue to local governments because fees associated with the program are remitted to the state and not to local governments. Additionally, the proposed rules make no changes to fees or processes that would affect the revenue of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022. There should be no impact to local employment since it is not anticipated that enough additional individuals will choose to become licensed as barbers or establishments because of the opportunity to provide remote services to affect local employment.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be more accessibility to barbering services and reduced regulatory burden on businesses, schools, and students.

The ability to offer remote services to the public will make some barbering services more accessible and convenient to the public because certain services will be able to be performed outside of a licensed establishment. The change in the frequency in inspections for some establishments with less risk to public health and safety allows TDLR to focus its resources in areas which will better protect the public. The removal of outdated requirements for a barber school, such as having a clock, bulletin board, chalkboard, and an instructor's desk in each classroom, will save barber school owners the cost of purchasing these items. Removing the outdated requirements will also eliminate the possibility of a barber school being found in violation for not having items that are not necessary for barbering instruction.

The removal of the requirement for a student examinee to bring another person to act as a model for the practical examination, and instead use a mannequin to demonstrate the practical work, could save students time, effort, and the expense of bringing another person to a testing center, if finding a volunteer proves to be a difficulty.

The reduction in curriculum hours needed to obtain a Class A Barber license will allow students seeking that license to complete their education quicker and, once they pass the examinations, they will be able to begin working that much sooner. Those students could also see a decrease in their school tuition to match the reduction in hours.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. There may be an initial cost to licensees seeking to provide digitally prearranged remote services, who will need to set up a digital network and comply with the requirements for providing digital services. However, no licensee is required to comply with the proposed rules for remote service businesses and therefore this would be a discretionary cost.

Any school which chooses to lower the number of hours in its Class A Barber curriculum will need to adjust their curriculum, in doing so the school may incur a cost. However, this cost will depend on the school's business model and the amount of resources it will have to expend, which will vary. Therefore, it is not possible to estimate this cost. A school that chooses to lower the number of hours in its Class A Barber curriculum will also need to have its curriculum recertified by the Department, but there will be no additional fee or costs for that recertification.

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

(Gov't Code §2006.002)

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

The proposed rules do not have an anticipated adverse economic effect on small businesses or micro-businesses. The proposed rules do not impose additional fees upon licensees or small/micro businesses, nor do they create requirements that would cause licensees or small/micro businesses to expend funds for equipment, staff, supplies, or infrastructure.

Individuals and businesses which choose to offer digitally prearranged remote services may incur a cost for setting up a digital network and meeting the other requirements for offering remote services. However, operating a remote service business is voluntary and any set-up costs are not expected to have an adverse economic impact on those who choose to offer the services.

Barber schools, which can be categorized as a small or micro-business, might have a cost for restructuring their Class A Barber curriculum, if they choose to lower the number of hours being taught. This cost is however, not expected to have an adverse economic impact on the business. Additionally, any costs that a school may incur for choosing to lower hours and their tuition for the Class A Barber course could be offset by the shorter period required for schooling. This means classes will be finishing in a shorter amount of time and the school will be able to start a new group of students sooner, which could prevent any decrease in tuition revenue from the shorter program.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

(Gov't Code §2001.0045)

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

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

HB 2847 created new regulation and expanded existing regulation by creating digitally prearranged remote services and remote service businesses. These proposed rules will allow a li-

ensee to provide limited barber services directly to the client outside of a licensed facility. The limited services are set to safeguard public safety. Additionally, the proposed rules repeal the requirement for a barber school to purchase and have certain items in the school such as: a clock, bulletin board, chalk board, and an instructor's desk in each classroom.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do 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, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Dalma Sotero, Assistant General Counsel, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 1601, and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the proposed rules.

§82.10. Definitions.

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

(1) - (15) (No change.)

(16) Digital Network--Any online-enabled application, Internet website, or system offered or used by a remote service business that allows a client to arrange for a digitally prearranged remote service.

(17) Digitally Prearranged Remote Service--A barbering or cosmetology service performed for compensation by a person holding a license, certificate of registration, or permit under Texas Occupations Code, Chapter 1601 or 1602 or this chapter that is:

(A) prearranged through a digital network; and

(B) performed at a location other than a place of business that is licensed or permitted under Texas Occupations Code, Chapter 1601, 1602, or 1603.

(18) ~~[(16)]~~ Dual Shop--A shop owned, operated, or managed by a person holding a dual barber and beauty shop license issued under Texas Occupations Code, Chapter 1603.

(19) ~~[(17)]~~ Guest Presenter--A person who possesses subject matter knowledge in a specific curriculum topic and who has the teaching ability necessary to impart the information to students. Instruction is limited to the presenter's area of expertise and a licensed instructor must be present during the classroom sessions in order for students to earn hours.

(20) [(48)] Hair Relating to Haircutting--The hair extending from the scalp of the head is recognized as the hair trimmed, shaped or cut in the process of hair cutting.

(21) [(49)] Hair weaver--A person who holds a Hair Weaving Specialty Certificate of Registration and who may perform only the practice of barbering as defined in Texas Occupations Code, §1601.002(1)(H).

(22) [(20)] License--A license, permit, certificate, or registration issued under the authority of the Act.

(23) [(21)] License by Substantial Equivalence [~~reciprocity~~]--A process that permits a barber license holder from another jurisdiction or foreign country to obtain a Texas barber license without repeating barber education or examination license requirements.

(24) [(22)] Line of Demarcation between "the hair" and "the beard"--The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a horizontal line drawn from the bottom of the ear.

(25) [(23)] Manicurist--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(E) and (F).

(26) [(24)] Mini-Barbershop--A barber establishment in which a person practices barbering under a license, certificate, or permit issued under this chapter and which consists of a room or suite of rooms that is one of a number of connected establishments in a single premises that open onto a common hallway or common area.

(27) [(25)] Mini-Dual Shop--A shop owned, operated, or managed by a person holding a mini-barber and mini-beauty shop license under Texas Occupations Code §1603.207.

(28) [(26)] Mini-Barbershop Permittee--A person or entity that holds a license for a mini-barbershop or mini-dual shop. The mini-barbershop permittee shall be responsible for rules under Texas Occupations Code, Chapters 1601, 1602, and 1603 and 16 TAC Chapters 82 and 83 for its mini-barbershop or mini-dual shop.

(29) [(27)] Mobile Shop--A barbershop, specialty shop, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(30) [(28)] Provisional license--A license that allows a person to practice barbering in Texas pending the department's approval or denial of that person's application for licensure by substantial equivalence [~~reciprocity~~].

(31) Remote Service Business--A corporation, partnership, sole proprietorship, or other entity that, for compensation, enables a client to schedule a digitally prearranged remote service with a person holding a license, certificate of registration, or permit under Texas Occupations Code, Chapters 1601, 1602, or 1603.

(32) [(29)] Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(33) [(30)] Sideburn--Part of a haircut or style that is a continuation of the natural scalp hair growth, does not extend below the line of demarcation, and is not connected to any other bearded area on the face.

(34) [(31)] Special Event--Includes weddings, quinceaneras, pageants, proms, debutante balls, birthday parties, religious and cultural ceremonies, and on-stage performances.

(35) [(32)] Specialty Instructor--A person authorized by the department to perform or offer instruction in an act or practice of barbering limited to Texas Occupations Code §1601.002(1)(C) - (H).

(36) [(33)] Specialty Shop--A barber establishment in which only the practice of barbering as defined in Texas Occupations Code §1601.002(1)(E), (F), or (H) is performed.

(37) [(34)] Student Permit--A permit issued by the department to a student enrolled in barber school which states the student's name and the name of the school. A person holding an active student permit may shampoo and condition a person's hair in a facility licensed under Texas Occupations Code, Chapters 1601 and 1603.

(38) [(35)] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

§82.20. License Requirements--Individuals.

(a) To be eligible for a Class A Barber Certificate, Barber Instructor License, Barber Technician License, Manicurist License, Barber Technician/Manicurist License, Barber Technician/Hair Weaving License or Hair Weaving Specialty Certificate of Registration, an applicant must:

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

(4) meet other applicable requirements of the Act, this section, and the applicable curriculum standards set forth in §82.120.

(b) To be eligible for a Student Permit, an applicant must:

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

(3) meet other applicable requirements of the Act, this section and the applicable curriculum standards set forth in §82.120.

(c) - (k) (No change.)

(l) To operate a remote service business an individual must be licensed to practice barbering and must:

(1) in a manner prescribed by the department, notify the department of the intent to operate a remote service business;

(2) provide a permanent mailing address; and

(3) verify that the remote service business complies with the requirements of the Act and this chapter.

(m) The purpose of this transition rule is to provide guidance on how to implement the transition from 1,500 to 1,000 hours.

(1) Beginning January 1, 2020, the department may allow students enrolled on or after January 1, 2020 in a 1,500-hour program to transfer hours towards a 1,000-hour program if the hours meet the required technical standards. A student enrolling in barber school on or after January 1, 2020 may request to transfer completed hours of a 1,500-hour program towards an approved 1,000-hour program or to transfer to another school.

(2) Upon request of a student enrolled on or after January 1, 2020, the school must apply hours earned towards a 1,000-hour program if the school has an approved 1,000-hour program or allow the student to transfer to another school. This rule expires on December 1, 2020.

§82.21. License Requirements--Examinations.

(a) To be eligible for a department examination, an applicant must:

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

(3) have completed the number of curriculum hours required by this chapter and the Act.

(b) ~~[For a Class A barber certificate, a student enrolled in a 1,500 hour program is eligible to take the written examination when the department receives proof of completion of 1,000 curriculum hours.]~~ A student enrolled in a 1,000-hour ~~[1,000 hour]~~ program is eligible to take the written examination when the department receives proof of completion of 900 curriculum hours.

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

(f) The examinee may ~~[shall]~~ provide a model, of 16 years of age or older, on whom to demonstrate the practical work. The department may require parental approval for models under 18 years of age.

(g) - (j) (No change.)

§82.22. Permit Requirements--Barbershops, Specialty Shops, Dual Shops, Mini-Barbershops, Mini-Dual Shops, Mobile Shops, and Booth Rental.

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

(i) To operate a remote service business, a Barbershop, specialty shop, dual shop, mobile shop, mini-barbershop, or mini-dual shop must:

(1) in a manner prescribed by the department, notify the department of the intent to operate a remote service business;

(2) provide a permanent mailing address; and

(3) verify that the remote service business complies with the requirements of the Act and this chapter.

§82.28. Substantial Equivalence [Reciprocity] or Endorsement and Provisional Licensure.

(a) (No change.)

(b) Applicant must:

(1) (No change.)

(2) pay the fee for license by substantial equivalence ~~[reciprocity]~~, the applicable license application fee, and the law and rules book fee, under §82.80;

(3) - (5) (No change.)

(c) Texas requires 1,000 ~~[1,500]~~ hours of training substantially equivalent to the Texas curriculum. If the applicant graduated in a state that required less than 1,000 ~~[1,500]~~ hours, documented work experience may be substituted at the rate of 25 hours per month worked, up to a maximum of 500 hours, or the applicant must complete the balance of hours required in an approved Texas barber school.

(d) (No change.)

(e) The department may issue a provisional license to applicants currently licensed in another jurisdiction who file an application for a Texas barber license by substantial equivalence ~~[reciprocity]~~.

(f) To be eligible for a provisional license, an applicant must:

(1) file a completed application for a Texas barber license by substantial equivalence ~~[reciprocity]~~;

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

(g) A person issued a provisional license may perform those acts of barbering authorized by the provisional certificate or license pending the department's approval or denial of an applicant's license by substantial equivalence ~~[reciprocity]~~.

(h) A provisional certificate or license is valid until the date the department approves or denies the application for licensure by substantial equivalence ~~[reciprocity]~~. The department must approve or deny a provisional certificate or license holder's application for a certificate or license by substantial equivalence ~~[reciprocity]~~ not later than the 180th day after the date the provisional certificate or license is issued.

(i) The department shall issue a certificate or license by substantial equivalence ~~[reciprocity]~~ to the provisional certificate or license holder if the person is eligible to hold a certificate or license under the Act.

(j) An applicant for licensure by substantial equivalence ~~[reciprocity]~~ is eligible for a provisional certificate or license only once. A person who is denied licensure by substantial equivalence ~~[reciprocity]~~ and subsequently reapplies for licensure by substantial equivalence ~~[reciprocity]~~ is not eligible to obtain additional provisional certificates or licenses to practice barbering in Texas.

§82.52. Periodic Inspections.

(a) Except as provided by subsection (b), each ~~[Each]~~ barber-shop, specialty shop, dual shop, mini-barbershop, and mini-dual shop shall be inspected at least once every four ~~[two]~~ years. Each barber school shall be inspected at least twice per year.

(b) At least once every two years, the department shall inspect specialty shops that hold a license, certificate or permit at which the practices described in Texas Occupations Code, §§1601.002(1)(E) or (F) or 1602.002(a)(8) or (9) are performed

(c) ~~[(b)]~~ The barber-shop, specialty shop, dual shop, mini-barbershop, or mini-dual shop owner, manager, or their representative must, upon request, make available to the inspector the list required by §82.71(c) of all individuals who work in the shop.

(d) ~~[(e)]~~ Upon completion of the inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.

(e) ~~[(d)]~~ For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner. The report will also indicate the corrective modifications required to address the violations, in accordance with §82.54. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations, in accordance with §82.90.

(f) ~~[(e)]~~ Based on the results of the periodic inspection, a barber establishment found out of compliance may be reinspected.

§82.70. Responsibilities of Individuals.

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

(c) A licensee performing digitally prearranged remote services may perform these services at a location other than a licensed facility if the appointment is made through a remote service business's digital network.

(d) ~~[(e)]~~ Only a permitted barber school, barber-shop, mini-barbershop, specialty shop, dual shop, mini-dual shop, mobile shop, or a licensed barber may advertise as a "Barber."

(e) ~~[(d)]~~ License holders, including Class A barbers, barber instructors, barber technicians, barber technician/manicurists, barber technician/hair weavers, hair weavers, manicurists, and specialty instructors are responsible for compliance with the health and safety standards of this chapter.

(f) ~~[(e)]~~ Licensees shall wear clean top and bottom outer garments and footwear while performing services authorized under the

Act. Outer garments include tee shirts, blouses, sweaters, dresses, smocks, pants, jeans, shorts, and other similar clothing and does not include lingerie or see-through fabric.

(g) ~~[(f)]~~ Licensees shall notify the department in writing of any name change within thirty days of the change.

(h) ~~[(g)]~~ Licensees shall maintain a current mailing address on file with the department and must notify the department within thirty days following any change of mailing address.

(i) ~~[(h)]~~ Barbers, manicurists, barber instructors, specialty instructors, barber technicians, barber technician/manicurists, barber technician/hair weavers, or hair weavers who lease space on the premises of a barbershop, dual shop, or specialty shop to engage in the practice of barbering as an independent contractor must hold a booth rental permit.

§82.72. *Responsibilities of Barber Schools.*

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

(d) A ~~[The]~~ barber school must issue within seven days of enrollment each student his or her own textbook or books which shall contain all subjects referred to in Texas Occupations Code §1601.558. The department must approve each textbook or books before it may be used in a ~~[the]~~ barber school ~~[curriculum]~~.

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

(g) Each barber school shall have:

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

(3) a ~~[minimum of two canvas-type]~~ wig block ~~[blocks];~~

(4) - (5) (No change.)

~~[(6) clock;]~~

~~[(7) bulletin board;]~~

~~[(8) chalk board or dry erase board;]~~

(6) ~~[(9)]~~ one hooded hair dryer;

~~[(10) fire extinguisher with current inspection report;]~~

~~[(11)] [instructor's desk in classroom;]~~ and

(7) ~~[(12)]~~ if providing manicure or pedicure nail services, an autoclave, dry heat sterilizer or ultraviolet sanitizer.

(h) - (n) (No change.)

(o) A barber school offering distance education must:

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

(3) comply with the curriculum standard requirements set forth in §82.120 by limiting distance education to the maximum number of theory hours designated for each course type.

(p) - (x) (No change.)

(y) A school shall maintain and have available for department and/or student inspection the monthly progress report required by Texas Occupations Code, §1601.561(a), documenting the daily attendance record of each student and number of credit hours earned. The school shall maintain the monthly progress report throughout the period of the student's enrollment and for 48 months after the student completes the curriculum standards, withdraws, or is terminated.

(z) - (dd) (No change.)

§82.74. *Responsibilities--Withdrawal, Reentry, or Transfer of Student.*

(a) Withdrawal. Except for a documented leave of absence, schools shall electronically submit a student's withdrawal or termination to the department within 10 calendar days after the withdrawal or termination. Except for a documented leave of absence, a school shall terminate a student who does not attend class ~~[a barber curriculum]~~ for 30 consecutive days.

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

(d) Transfer of student hours from out of state.

(1) (No change.)

(2) If the student has not completed 1,000 ~~[1,500]~~ hours in another state, credit for hours completed will be given when he or she is enrolled in a Texas barber school and when a student permit is issued.

§82.77. *Remote Service Business Responsibilities.*

(a) A licensee may not operate a remote service business without first providing notice to the department in accordance with this chapter.

(b) Only licensed individuals may perform digitally prearranged remote services.

(c) A remote service business must comply with the requirements of the Act, this chapter, and all health and safety requirements, as applicable.

(d) A remote service business may not offer a barbering service that requires treating or removing a person's hair by:

(1) coloring;

(2) processing;

(3) bleaching;

(4) dyeing;

(5) tinting; or

(6) using a cosmetic preparation.

(e) A remote service business may offer only the following barbering services:

(1) haircutting, hairstyling, wigs, artificial hairpieces, or weaving a person's hair by thread and needle or attaching by clamps or glue;

(2) arranging, beautifying, shaving, styling, or trimming a person's mustache or beard;

(3) beautifying a person's face, neck, or arms using anti-septic, tonic, lotion, powder, oil, clay, or cream;

(4) removing superfluous hair on the face using tweezers; and

(5) massaging, cleansing and treating person's hands or feet for polish change manicures and pedicures, and non-whirlpool foot basin pedicures only.

(f) A remote service business may not offer portable whirlpool foot spa pedicures.

(g) A licensed individual performing digitally prearranged remote services must practice within the scope of the individual's license and may only provide the services specifically authorized by this section.

(h) A remote service business shall provide through the business's digital network prior to any digitally prearranged remote service being performed:

(1) the following information regarding the licensee who will perform the service:

(A) the person's first and last name;

(B) the person's license number, certificate of registration, or permit number, as applicable; and

(C) a photograph of the person who will be performing the remote services;

(2) the following information regarding the business:

(A) Internet website address; and

(B) telephone number; and

(3) the department's Internet website address and telephone number and notice that the client may contact the department to file a complaint against the remote service business or licensed individual performing the service.

(i) A remote service business shall maintain records and information showing compliance with this chapter and the Act until at least the fifth anniversary of the date the record was generated.

(j) A licensee who provides a digitally prearranged remote services is responsible for the services provided.

(k) A remote service business shall terminate a licensee's access to the business's digital network if the remote service business or department determine there has been a violation of:

(1) this chapter; or

(2) the Act.

(l) Before a licensee provides a digitally prearranged remote service, the remote service business and the licensee must ensure that all implements and supplies have been cleaned, disinfected, and sanitized or sterilized with department-approved disinfectants and in accordance with the requirements of the Act and this chapter.

(m) A remote service business and licensee performing remote services must ensure compliance with all safety and sanitation requirements related to the digitally prearranged remote services being provided and in accordance with the Act and this chapter.

(n) A remote service business shall maintain accurate records and information showing compliance with this chapter and the Act and must make these records available to the department upon request.

§82.80. Fees.

(a) - (b) (No changes.)

(c) Substantial equivalence [~~Reciprocity~~] or Endorsement Fee--\$55

(d) - (j) (No changes.)

§82.120. Technical Requirements--Curricula Standards.

(a) (No change.)

(b) The curriculum standards for the 750 hour barber instructor license must be completed in a course of not less than 20 weeks as follows:

Figure: 16 TAC §82.120(b)

[Figure: 16 TAC §82.120(b)]

(c) The curriculum standards for the barber instructor license with one year experience consists of 500 hours to be completed in a course of not less than 13 weeks as follows:

Figure: 16 TAC §82.120(c)

[Figure: 16 TAC §82.120(e)]

(d) The curriculum standards for the class A barber certificate in a private or public post-secondary barber school consists of 1,000 [1,500] hours, to be completed in a course of not less than six [nine] months, as follows:

Figure: 16 TAC §82.120(d)

[Figure: 16 TAC §82.120(d)]

(e) The curriculum standards for the class A barber certificate while holding a cosmetology operator license consists of 300 hours, to be completed in a course of not less than 9 weeks, as follows:

Figure: 16 TAC §82.120(e)

[Figure: 16 TAC §82.120(e)]

(f) The curriculum standards for the class A barber certificate in a public secondary program for high school students consists of 1,000 hours of instruction in barber courses and 500 hours of related high school courses prescribed by the commission in a vocational barber program in a public school to be completed in a course of not less than six months, with the 1,000 hours as follows:

Figure: 16 TAC §82.120(f)

[Figure: 16 TAC §82.120(f)]

(g) The curriculum standards for the manicurist license consists of 600 hours, to be completed in a course of not less than 16 weeks, as follows:

Figure: 16 TAC §82.120(g)

[Figure: 16 TAC §82.120(g)]

(h) The curriculum standards for the barber technician/manicurist license consists of 900 hours; to be completed in a course of not less than 24 weeks, as follows:

Figure: 16 TAC §82.120(h)

[Figure: 16 TAC §82.120(h)]

(i) The curriculum standards for the barber technician/hair weaving license consists of 600 hours to be completed in a course of not less than 16 weeks, as follows:

Figure: 16 TAC §82.120(i)

[Figure: 16 TAC §82.120(i)]

(j) The curriculum standards for the barber technician license consists of 300 hours, to be completed in a course of not less than 8 weeks, as follows:

Figure: 16 TAC §82.120(j)

[Figure: 16 TAC §82.120(j)]

(k) The curriculum standards for the hair weaving specialty certificate of registration consists of 300 hours as follows:

Figure: 16 TAC §82.120(k)

[Figure: 16 TAC §82.120(k)]

(l) Field Trips

(1) (No change.)

(2) A student may obtain the following field trip [curriculum] hours:

~~{(A) a maximum of 75 hours out of the 1,500 hour Class A Barber course;}~~

(A) ~~[(B)]~~ a maximum of 50 hours out of the 1,000 hour class A Barber course;

(B) ~~[(C)]~~ a maximum of 30 hours for the Manicure course;

(C) ~~[(D)]~~ a maximum of 20 hours for the Barber Technician course;

(D) ~~[(E)]~~ a maximum of 45 hours for the Barber Technician/Manicurist course;

(E) [(F)] a maximum of 30 hours for the Barber Technician/Hair Weaving course;

(F) [(G)] a maximum of 20 hours for the Hair Weaving course;

(G) [(H)] a maximum of 35 hours for the 750 hour Instructor course;

(H) [(I)] a maximum of 25 hours for the 500 hour Instructor course; and

(I) [(J)] a maximum of 15 hours for the Cosmetology Operator to Class A Barber course.

(3) - (5) (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 December 18, 2019.

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Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 2, 2020

For further information, please call: (512) 463-8179



CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.10, 83.20 - 83.23, 83.25, 83.28, 83.52, 83.70, 83.72, 83.74, 83.77, 83.80, 83.120

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 83, §§83.10; 83.20 - 83.23; 83.25; 83.28; 83.52; 83.70; 83.72; 83.74; 83.80; and 83.120; and new rule §83.77, regarding the Cosmetologist Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 83 implement Texas Occupations Code, Chapter 1602, Regulation of Cosmetology, and Chapter 1603, Regulation of Barbering and Cosmetology.

The proposed rules implement necessary changes as required by House Bill (HB) 2847, 86th Legislature, Regular Session (2019).

As required by HB 2847 the proposed rules lower the number of hours required to obtain an Operator License from 1,500 to 1,000, increase the inspection cycle for establishments that provide certain services, and provide for the regulation of remote service businesses and digitally prearranged remote services.

The proposed rules also include recommendations from the Advisory Board's workgroups to reduce regulatory burdens and providing more clarity to the industry by using more updated and standardized terminology.

The proposed rules and options for the 1000-hour curriculum standards were presented to and discussed by the Advisory Board on Cosmetology (Advisory Board) at its meeting on November 18, 2019. The Advisory Board did not make any other changes to the proposed rules and after considering the

options, recommended a curriculum standard for publication. The Advisory Board voted and recommended that the proposed rules be published in the Texas Register for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §83.10, by adding definitions for "Digital Network," "Digitally Prearranged Remote Service," and "Remote Service Business." The proposed rules update terminology by removing the incorrect term of "reciprocity", replacing it with the term "substantial equivalence." The proposed rules update the scope for certain license types as required by HB 2847 and add the term "standards" after "curriculum."

The proposed rules amend §83.20, by adding the term "standards" after "curriculum" for clarity, lowering the number of hours required to obtain an Operator License from 1,500 to 1,000, providing for the orderly transition from 1,500 to 1,000-hours for students and schools, and establishing requirements for individuals to notify the Department of their intention to operate a remote service business as established by HB 2847.

The proposed rules amend §83.21, by removing the term "curriculum" for clarity and removing requirements for 1,500-hour program.

The proposed rules amend §83.22, by establishing requirements for beauty salons, specialty salons, dual shops, mobile shops, mini salons, or mini-dual shops to notify the Department of their intention to operate a remote service business as established by HB 2847.

The proposed rules amend §83.23, by updating language for clarity on certificates of approval for curriculum standards.

The proposed rules amend §83.25, by adding the term "standards" after "curriculum" for clarity.

The proposed rules amend §83.28, by updating incorrect use of the term "reciprocity" with the term "substantial equivalence."

The proposed rules amend §83.52, by increasing the inspection cycle for certain beauty salons, specialty salons, dual shops, mini-salons, or mini-dual shops from two to four years. Beauty salons, specialty salons, dual shops, mini-salons, or mini-dual shops that practice: treating a person's nails by cutting, trimming, polishing, tinting, coloring, cleansing, manicuring, or pedicuring; or attaching false nails; or massaging, cleansing, treating, or beautifying a person's hands will remain on a two-year inspection cycle.

The proposed rules amend §83.70, by clarifying that a licensee performing digitally prearranged remote services is allowed to perform these services at a location other than a licensed facility, if the appointment is made through a remote service business's digital network. These proposed rules implement HB 2847.

The proposed rules amend §83.72, by adding the term "standards" after "curriculum" for clarity and updating language and equipment requirements for beauty culture schools to remove regulatory burdens and provide clarity.

The proposed rules amend §83.74, by adding the term "standards" after "curriculum" for clarity.

The proposed rules add new §83.77 regarding remote service business responsibilities. The proposed new rule outlines the requirements for operating a remote service business and the digitally prearranged remote services that may or may not be performed by a licensee working for a remote service business. This new rule implements HB 2847.

The proposed rules amend §83.80, by replacing the incorrect use of the term "reciprocity" with "substantial equivalence."

The proposed rules amend §83.120, by adding the term "standards" after "curriculum" for clarity, lowering the number of curriculum hours required for an Operator license from 1,500 to 1,000 and updating the curriculum standards for both private and public post-secondary cosmetology schools and for high schools.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

The proposed rules impact cosmetology services but do not impact program costs. The reduction in the number of curriculum hours for the Operator license will require recertification of the curriculum at each school that chooses to lower the hours taught. These recertifications can be accomplished with current agency resources so no increase in costs to the State is necessary. The establishment of remote service businesses and the change of the inspection cycle for certain beauty salons, specialty salons, dual shops, mini-salons, or mini-dual shops from two years to four years will not cause enough extra duties for the Department, which would necessitate an increase in personnel or resources and thus an increase in costs or cause a reduction of costs to the state.

The remaining activities required to implement the proposed rule changes are one-time program administration tasks that are routine in nature, such as modifying or revising publications, forms or website information, which will not result in an increase in program costs. Additionally, the proposed changes will not result in a reduction in costs to the state because these proposed rules do not decrease the need for personnel or resources.

The proposed rule changes have no direct impact on local governments. Local governments do not regulate the Cosmetology profession and industry.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

The proposed rules for the reduction of hours required for an Operator license will not affect the enrollment in cosmetology schools and thus not affect the number of cosmetology schools and cause a loss in revenue to the State.

The change in the frequency of periodic inspections for beauty salons, specialty salons, dual shops, mini-salons, or mini-dual shops will not result in a loss in revenue because these establishments do not pay a fee for inspections. There is no anticipated loss in State revenue, as the proposed rules do not amend or impact the fees assessed by the licensing program. The proposed rules will not increase revenue because there are no new licenses or fees being created by the proposed rules. Licensees who provide remote services will not have to pay any fees to the State to perform those services, therefore state revenue is not affected by the proposed rules for remote services. Additionally, there will be no fee charged by TDLR for submission of an existing Operator curriculum for recertification because of the proposed reduction of hours.

There is no anticipated revenue loss or increase in revenue to local governments because fees associated with the program are remitted to the state and not to local governments. Additionally, the proposed rules make no changes to fees or processes that would affect the revenue of local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

There should be no impact to local employment since it is not anticipated that enough additional individuals will choose to become licensed as cosmetologist or establishments because of the opportunity to provide remote services to affect local employment.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be more accessibility to cosmetology services and reduced regulatory burden on businesses, schools, and students.

The ability to offer remote services to the public will make some cosmetology services more accessible and convenient to the public because certain services will be able to be performed outside of a licensed establishment. The change in the frequency in inspections for some establishments with less risk to public health and safety allows the Department to focus its resources in areas which will better protect the public. The removal of an outdated requirement for a beauty culture school, such as having a medical dictionary and updating terminology to reflect more current mediums for teaching will save school owners the cost of purchasing these items and eliminate the possibility of a schools being found in violation of the rules.

The reduction in curriculum hours needed to obtain an Operator license will allow students seeking that license to complete their education quicker and, once they pass the examinations, they will be able to begin working that much sooner. Those students could also see a decrease in their school tuition to match the reduction in hours.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. There may be an initial cost to licensees seeking to provide digitally prearranged remote services, who will need to set up a digital network and comply with the requirements for providing digital services. However, no licensee is required to comply with the proposed rules for remote service businesses and therefore this would be a discretionary cost.

Schools lowering the number of hours in its Operator curriculum will be required to adjust their curriculum, in doing so the school may incur a cost. However, this cost will depend on the school's business model and the amount of resources it will have to expend, which will vary. Therefore, it is not possible to estimate this cost. A school will also need to have its curriculum recertified by the Department, but there will be no additional fee or costs for that recertification.

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

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

The proposed rules do not have an anticipated adverse economic effect on small businesses or micro-businesses. The proposed rules do not impose additional fees upon licensees or small/micro businesses, nor do they create requirements that would cause licensees or small/micro businesses to expend funds for equipment, staff, supplies, or infrastructure.

Individuals and businesses which choose to offer digitally prearranged remote services may incur a cost for setting up a digital network and meeting the other requirements for offering remote services. However, operating a remote service business is voluntary and any set-up costs are not expected to have an adverse economic impact on those who choose to offer the services.

Schools, which can be categorized as a small or micro-business, might have a cost for restructuring their Operator curriculum when lower the number of hours being taught. This cost is however, not expected to have an adverse economic impact on the business. Additionally, any costs that a school may incur for lowering hours and their tuition for the Operator course could be offset by the shorter period required for schooling. This means classes will be finishing in a shorter amount of time and the school will be able to start a new group of students sooner, which could prevent any decrease in tuition revenue from the shorter program.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do create a new regulation.
6. The proposed rules do expand, limit, or repeal an existing regulation.
7. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.

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

HB 2847 created new regulation and expanded existing regulation by creating digitally prearranged remote services and remote service businesses. These proposed rules will allow a licensee to provide limited barber services directly to the client outside of a licensed facility. The limited services are set to safeguard public safety.

The additions to scope for certain license types are added only to correct inadvertent omissions from previous revision to the cosmetology statute. The proposed rules merely update the definitions to reflect what is currently in practice.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do 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, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Dalma Sotero, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the proposed rules.

§83.10. Definitions.

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

(1) - (8) (No change.)

(9) Digital Network--Any online-enabled application, Internet website, or system offered or used by a remote service business that allows a client to arrange for a digitally prearranged remote service.

(10) Digitally Prearranged Remote Service--A barbering or cosmetology service performed for compensation by a person holding a license, certificate of registration, or permit under Texas Occupations Code, Chapter 1601, or 1602, or this chapter that is:

(A) prearranged through a digital network; and

(B) performed at a location other than a place of business that is licensed or permitted under Texas Occupations Code, Chapter 1601, 1602, or 1603.

(11) [(9)] Distance Education--A formal instructional process in which the student and teacher are separated by physical

distance and a variety of communication technologies are used to deliver instruction in theory to the student. Courses taught by distance education do not satisfy the requirements of the practical portion of the course curriculum standards.

(12) [(40)] Dual Shop--A shop owned, operated, or managed by a person holding a dual barber and beauty shop license issued under Texas Occupations Code, Chapter 1603.

(13) [(41)] Eyelash Extension Application--The process of applying and removing a semi-permanent, thread-like, natural or synthetic single fiber to an eyelash, including cleansing of the eye area and lashes prior to applying and after removing extensions.

(14) [(42)] Eyelash Extension Specialist--A person who holds a specialty license and who is authorized to practice the service defined in Texas Occupations Code §1602.002(a)(10).

(15) [(43)] Esthetician--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1602.002(a)(4) - (7) and (10). The term esthetician in this chapter includes the term facialist.

(16) [(44)] Esthetician/Manicurist--An esthetician/manicurist may perform only those services defined in Texas Occupations Code §1602.002(a)(4) - (10) [§1602.002(a)(4) - (9)].

(17) [(45)] Guest Presenter--A person who possesses subject matter knowledge in specific curriculum topics and who has the teaching ability necessary to impart the information to cosmetology students. Instruction is limited to the presenter's area of expertise and a licensed instructor must be present during the classroom session in order for students to earn hours.

(18) [(46)] Hair weaver--A person who holds a hair weaving specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(11).

(19) [(47)] Instructor--An individual authorized by the department to perform or offer instruction in any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(20) [(48)] Law and Rules Book--Texas Occupations Code, Chapters 1602 and 1603, and 16 Texas Administrative Code Chapter 83.

(21) [(49)] License--A department-issued permit, certificate, approval, registration, or other similar permission required under Texas Occupations Code, Chapter 1601, 1602, or 1603.

(22) [(20)] License by substantial equivalence [reciprocity]--A process that permits a cosmetology license holder from another jurisdiction or foreign country to obtain a Texas cosmetology license without repeating cosmetology education or examination license requirements.

(23) [(21)] Manicurist--A manicurist may perform only those services defined in Texas Occupations Code §1602.002(a)(8) and (9).

(24) [(22)] Mini-Salon--A cosmetology establishment in which a person practices cosmetology under a license, certificate or permit issued under this chapter and which consists of a room or suite of rooms that is one of a number of connected establishments in a single premises that open onto a common hallway or common area.

(25) [(23)] Mini-Dual Shop--A shop owned, operated, or managed by a person meeting the requirements of both a mini-barbershop and mini-beauty shop license under Texas Occupations Code §1603.207.

(26) [(24)] Mini-Salon Licensee--A person or entity that holds a license for a mini-salon or mini-dual shop. The mini-salon licensee shall be responsible for rules under Texas Occupations Code, Chapters 1601, 1602, and 1603, and 16 TAC Chapters 82 and 83 for the mini-salon or mini-dual shop.

(27) [(25)] Mobile Shop--A beauty salon, specialty salon, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(28) [(26)] Operator--An individual authorized by the department to perform any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(29) [(27)] Preparation--A substance used to beautify a person's face, neck or arms or to temporarily remove superfluous hair from a person's body including but not limited to antiseptics, tonics, lotions, powders, oils, clays, creams, sugars, waxes and/or chemicals.

(30) [(28)] Provisional license--A license that allows a person to practice cosmetology in Texas pending the department's approval or denial of that person's application for licensure by substantial equivalence [reciprocity].

(31) Remote Service Business--A corporation, partnership, sole proprietorship, or other entity that, for compensation, enables a client to schedule a digitally prearranged remote service with a person holding a license, certificate of registration, or permit under Texas Occupations Code, Chapters 1601, 1602, or 1603.

(32) [(29)] Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(33) [(30)] Safety Razor--A razor that is fitted with a guard close to the cutting edge of the razor that is intended to prevent the razor from cutting too deeply and reduces the risk and incidence of accidental cuts.

(34) [(31)] Special Event--Includes weddings, quinceaneras, pageants, proms, debutante balls, birthday parties, religious and cultural ceremonies, and on-stage performances.

(35) [(32)] Specialty Instructor--An individual authorized by the department to perform or offer instruction in an act or practice of cosmetology limited to Texas Occupations Code, §1602.002(a)(2), (4), (5), (6), (7), (8), (9), (10), and (11) [§1602.002(a)(5), (7), (8), and (10)].

(36) [(33)] Specialty Salon or Specialty Shop--A cosmetology establishment in which only the practice of cosmetology as defined in Texas Occupations Code, §1602.002(a)(2), (4), (5), (6), (7), (8), (9), [or] (10), or (11) is performed. Specialty salons may only perform the act or practice of cosmetology in which the salon is licensed.

(37) [(34)] Student Permit--A permit issued by the department to a student enrolled in cosmetology school which states the student's name and the name of the school.

(38) [(35)] Tweezing Technique--Any type of temporary hair removal procedure involving the extraction of hair from the hair follicle by use of, but not limited to, an instrument, appliance or implement made of metal, plastic, or other material.

(39) [(36)] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

(40) [(37)] Wet disinfectant soaking container--A container with a cover to prevent contamination of the disinfectant solution and

of a sufficient size such that the objects to be disinfected may be completely immersed in the disinfectant solution.

(41) [(38)] Wig Specialist--A person who holds a wig specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(2).

§83.20. *License Requirements--Individuals.*

(a) To be eligible for an operator license an applicant must:

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

(5) have completed the following hours of cosmetology instruction at [curriculum in] a licensed beauty culture school either:

(A) 1,000 [1,500] hours of instruction in a beauty culture school; or

(B) - (C) (No change.)

(6) (No change.)

(b) To be eligible for an esthetician, manicurist, or esthetician/manicurist specialty license an applicant must:

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

(5) have completed the following hours of cosmetology instruction at [curriculum in] a licensed beauty culture school:

(A) - (C) (No change.)

(6) (No change.)

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

(e) To be eligible for a hair weaving specialty certificate or wig specialty certificate an applicant must:

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

(4) have completed the following hours of cosmetology instruction at [curriculum in] a beauty culture school:

(A) - (B) (No change.)

(5) (No change.)

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

(h) A license application is valid for one year from the date it is filed with the department.

(i) To operate a remote service business an individual must be licensed to practice cosmetology and must:

(1) in a manner prescribed by the department, notify the department of the intent to operate a remote service business;

(2) provide a permanent mailing address; and

(3) verify that the remote service business complies with the requirements of the Act and this chapter.

(j) The 86th Texas Legislature enacted changes to Chapter 1602, Occupations Code, reducing the number of hours required for a Cosmetology Operator License from 1,500 to 1,000 hours. See House Bill 2847, 86th Legislature, Regulation Session (2019), Article 14. The purpose of this transition rule is to provide guidance on how to implement the transition from 1,500 to 1,000 hours.

(1) Beginning January 1, 2020, the department may allow students enrolled on or after January 1, 2020 in a 1,500-hour program to transfer hours towards a 1,000-hour program if the hours meet the required technical standards. A student enrolling in cosmetology school

on or after January 1, 2020 may request to transfer completed hours of a 1,500-hour program towards an approved 1,000-hour program or to transfer to another school.

(2) Upon request of a student enrolled on or after January 1, 2020, the school must apply hours earned towards a 1,000-hour program if the school has an approved 1,000-hour program or allow the student to transfer to another school. This rule expires on December 1, 2020.

§83.21. *License Requirements--Examinations.*

(a) To be eligible for a department examination, an examinee must:

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

(3) have completed the number of [curriculum] hours required under this chapter and the Act.

(b) [For an operator license, a student enrolled in a 1,500 hour program is eligible to take the written examination when the department receives proof of the student's completion of 1,000 operator curriculum hours.] A student enrolled in a 1,000-hour [1,000 hour] program is eligible to take the written examination when the department receives proof of the student's completion of 900 operator [curriculum] hours.

(c) - (h) (No change.)

§83.22. *License Requirements--Beauty Salons, Specialty Salons, Mini-Salons, Dual Shops, Mini-Dual Shops, Mobile Shops, and Booth Rentals (Independent Contractors).*

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

(d) To operate a remote service business, a beauty salon, specialty salon, dual shop, mobile shop, mini salon, or mini-dual shop must:

(1) in a manner prescribed by the department, notify the department of the intent to operate a remote service business;

(2) provide a permanent mailing address; and

(3) verify that the remote service business complies with the requirements of the Act and this chapter.

§83.23. *License Requirements--Beauty Culture Schools.*

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

(c) Private beauty culture schools offering instruction for persons seeking a license or certificate must have and maintain the following:

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

(4) a copy of the certificate of approval for the curriculum standards approved by the department for each course offered.

(d) Public beauty culture schools must have and maintain the following:

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

(3) a copy of the certificate of approval for the curriculum standards approved by the department for each course offered.

(e) (No change.)

§83.25. *License Requirements--Continuing Education.*

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

(i) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

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

(3) the curriculum standards [~~subjects~~] listed in §83.120.

(j) - (l) (No change.)

§83.28. Substantial Equivalence [~~Reciprocity~~] or Endorsement and Provisional Licensure.

(a) To be granted a license through substantial equivalence [~~reciprocity~~] or endorsement, an applicant must:

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

(5) pay the substantial equivalence [~~reciprocity~~] fee and applicable license application fee required under §83.80.

(b) (No change.)

(c) A person issued a license through substantial equivalence [~~reciprocity~~] or endorsement may perform those acts of cosmetology authorized by the license.

(d) (No change.)

(e) The department may issue a provisional license to applicants currently licensed in another jurisdiction who file an application for a Texas cosmetology license by substantial equivalence [~~reciprocity~~].

(f) To be eligible for a provisional license, an applicant must:

(1) file a completed application for a Texas cosmetology license by substantial equivalence [~~reciprocity~~];

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

(g) A person issued a provisional license may perform those acts of cosmetology authorized by the provisional certificate or license pending the department's approval or denial of an applicant's license by substantial equivalence [~~reciprocity~~].

(h) A provisional certificate or license is valid until the date the department approves or denies the application for licensure by substantial equivalence [~~reciprocity~~]. The department must approve or deny a provisional certificate or license holder's application for a certificate or license by substantial equivalence [~~reciprocity~~] not later than the 180th day after the date the provisional certificate or license is issued.

(i) The department shall issue a certificate or license by substantial equivalence [~~reciprocity~~] to the provisional certificate or license holder if the person is eligible to hold a certificate or license under the Act.

(j) An applicant for licensure by substantial equivalence [~~reciprocity~~] is eligible for a provisional certificate or license only once. A person who is denied licensure by substantial equivalence [~~reciprocity~~] and subsequently reapplies for licensure by substantial equivalence [~~reciprocity~~] is not eligible to obtain additional provisional certificates or licenses to practice cosmetology in Texas.

§83.52. Periodic Inspections.

(a) Except as provided by subsection (b), each [~~Each~~] beauty salon, specialty salon, dual shop, mini-salon, or mini-dual shop shall be inspected at least once every four [~~two~~] years. Each beauty culture school shall be inspected at least twice per year.

(b) At least once every two years, the department shall inspect specialty shops that hold a license, certificate or permit at which the

practice described in Texas Occupations Code, §§1601.002(1)(E) or (F) or 1602.002(a)(8) or (9) are performed.

(c) [~~(b)~~] The beauty salon, specialty salon, or dual shop owner, manager, or their representative must, upon request, make available to the department representative the list required by §83.71(c) of all independent contractors and all mini-salon licensees or mini-dual shop permittees who work in the salon or shop.

(d) [~~(e)~~] Upon completion of the inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.

(e) [~~(d)~~] For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner. The report will also indicate the corrective modifications required to address the violations, in accordance with §83.54. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations, in accordance with §83.90.

(f) [~~(e)~~] Based on the results of the periodic inspection, a cosmetology establishment found out of compliance may be re-inspected.

§83.70. Responsibilities of Individuals.

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

(c) A licensee performing digitally prearranged remote services may perform these services at a location other than a licensed facility if the appointment is made through a remote service business's digital network.

(d) [~~(e)~~] A licensee who leases space as an independent contractor on the premises of a cosmetology establishment must hold a booth rental permit.

(e) [~~(d)~~] Specialty certificate holders may only perform the practice authorized by the specialty certificate.

(f) [~~(e)~~] All current licenses may be posted at the licensee's work station in the public view or be made available in a notebook at the salon reception desk.

(g) [~~(f)~~] A current photograph of the licensee approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the license, certificate or permit.

(h) [~~(g)~~] Licensees shall notify the department in writing of any name change within thirty (30) days of the change.

(i) [~~(h)~~] Licensees must notify the department within thirty (30) days following any change of address. The department may send all notices on other information required by applicable laws and rules to any licensee's last known mailing address on file with the department.

(j) [~~(i)~~] Licensees shall wear clean top and bottom outer garments and footwear while performing services authorized under the Act. Outer garments include tee shirts, blouses, sweaters, dresses, smocks, pants, jeans, shorts, and other similar clothing and do not include lingerie or see-through fabric.

(k) [~~(j)~~] Licensees are responsible for compliance with the health and safety standards of this chapter.

§83.72. Responsibilities of Beauty Culture Schools.

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

(d) The certificate of curriculum approval [~~approved curricula~~] shall be posted in a conspicuous place in the school. A current syllabus and lesson plan for each course shall be maintained by the school and be available for inspection.

(e) Unless the context clearly indicates otherwise, when used in this section the term "student-instructor" shall mean a student permit holder who is enrolled in an instructor course [~~curriculum~~] of a beauty culture school.

(f) Schools must have at least one licensed instructor on duty for each 25 students in attendance, including evening classes. A school may not enroll more than three student-instructors for each licensed instructor teaching in the school. The student-instructor shall at all times work under the direct supervision of the licensed instructor and may not service clients, but will concentrate on teaching skills. A licensed instructor must be physically present during all curriculum standard activities. No credit for instructional hours can be granted to a cosmetology student unless such hours are accrued under the supervision of a licensed instructor.

(g) Schools offering distance education must:

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

(3) comply with the curriculum standards [~~requirements~~] in §83.120(d) by limiting distance education to instruction in theory.

(h) - (k) (No change.)

(l) A school must properly account for the [~~credit~~] hours granted to each student. A school shall not engage in any act directly or indirectly that grants or approves student credit that is not accrued in accordance with this chapter. A school must maintain and have available for a department and/or student inspection the following documents for a period of the student's enrollment through 48 months after the student completes the curriculum standards, withdraws, or is terminated:

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

(m) - (p) (No change.)

(q) Except for a documented leave of absence, schools shall electronically submit a student's withdrawal or termination to the department within 10 calendar days after the withdrawal or termination. Except for a documented leave of absence, a school shall terminate a student who does not attend class [~~a cosmetology curriculum~~] for 30 consecutive days.

(r) - (u) (No change.)

(v) Schools must ensure that guest presenters possess the necessary knowledge and teaching ability to present a curriculum standard topic and that a licensed instructor is present during the guest presenter's classroom teaching.

(w) Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following equipment to properly instruct students enrolled at the school:

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

~~(3) medical dictionary;~~

(3) [(4)] multi-media [~~audio/visual~~] equipment;

(4) [(5)] a dispensary containing a sink with hot and cold running water and space for storage and dispensing of supplies and equipment;

(5) [(6)] a suitable receptacle for used towels/linens;

(6) [(7)] covered trash cans in lab area; and

(7) [(8)] wet disinfectant soaking container, large enough to fully immerse tools and implements.

(8) [(9)] If offering the operator curriculum standards the following equipment must be available in adequate number for student use:

(A) shampoo bowl and shampoo chair;

(B) hair drying equipment or professional [~~heat processor;~~] hand-held hair dryers [~~dryer, heat cap, or therapeutic light~~];

(C) - (G) (No change.)

~~[(H) professional hand held dryer;]~~

(H) [(H)] manicure table and stool;

(I) [(J)] facial chair or bed;

(J) [(K)] lighted magnifying glass;

(K) [(L)] dry sanitizer; and

(L) [(M)] wet disinfectant soaking containers, large enough to fully immerse tools and implements.

(9) [(10)] If offering the esthetician curriculum standards the following equipment must be available in adequate number for student use:

(A) facial chair or bed;

(B) - (J) (No change.)

~~[(K) facial bed;]~~

(K) [(L)] mannequin head; and

(L) [(M)] wet disinfectant soaking containers, large enough to fully immerse tools and implements.

(10) [(11)] If offering the manicure curriculum standards the following equipment must be available in adequate number for student use:

(A) - (J) (No change.)

(11) [(12)] If offering the esthetician/manicure curriculum standards, the equipment required for the esthetician curriculum standards as listed in paragraph (9) [(10)]; and the equipment required for the manicure curriculum standards as listed in paragraph (10) [(11)]; including a wax warmer and paraffin warmer for each service, in adequate number for student use.

(12) [(13)] If offering the eyelash extension curriculum standards; the following equipment must be available in adequate number for student use:

(A) - (F) (No change.)

(x) (No change.)

§83.74. Responsibilities--Withdrawal, Termination, Transfer, School Closure.

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

(h) A student enrolled for a specialty course may withdraw and transfer hours acquired to the operator course not to exceed the amount of hours of that subject in the operator curriculum standards. Students enrolled in the operator course may withdraw and transfer up to the maximum specialty hours within the operator curriculum standards for that course.

§83.77. Remote Service Business Responsibilities.

(a) A licensee may not operate a remote service business without first providing notice to the department in accordance with this chapter.

(b) Only licensed individuals may perform digitally prearranged remote services.

(c) A remote service business must comply with the requirements of the Act, this chapter, and all health and safety requirements, as applicable.

(d) A remote service business may not offer a cosmetology service that requires treating or removing a person's hair by:

- (1) coloring;
- (2) processing;
- (3) bleaching;
- (4) dyeing;
- (5) tinting; or
- (6) using a cosmetic preparation.

(e) A remote service business may offer only the following cosmetology services:

(1) haircutting, hairstyling, wigs, artificial hairpieces, or weaving a person's hair by thread and needle or attaching by clamps or glue;

(2) arranging, beautifying, shaving with a safety razor, styling, or trimming a person's mustache or beard;

(3) beautifying a person's face, neck, or arms using, anti-septic, tonic, lotion, powder, oil, clay, or cream;

(4) removing superfluous hair on the face using tweezers;

(5) massaging, cleansing and treating person's hands or feet for polish change manicures and pedicures, and non-whirlpool foot basin pedicures only; and

(6) applying semi-permanent, thread-like extensions composed of single fibers to a person's eyelashes.

(f) A remote service business may not offer portable whirlpool foot spa pedicures.

(g) A licensed individual performing digitally prearranged remote services must practice within the scope of the individual's license and may only provide the services specifically authorized by this section.

(h) A remote service business shall provide through the entity's digital network prior to any digitally prearranged remote service being performed:

(1) the following information regarding the licensee who will perform the service:

(A) the person's first and last name;

(B) the person's license number, certificate of registration, or permit number, as applicable; and

(C) a photograph of the person who will be performing the remote services;

(2) the following information regarding the business:

(A) Internet website address; and

(B) telephone number; and

(3) the department's Internet website address and telephone number and notice that the client may contact the department to file a complaint against the remote service business or licensed individual performing the service.

(i) A remote service business shall maintain records and information showing compliance with this chapter and the Act until at least the fifth anniversary of the date the record was generated.

(j) A licensee who provides a digitally prearranged remote services is responsible for the services provided.

(k) A remote service business shall terminate a licensee's access to the business's digital network if the remote service business or department determine there has been a violation of:

(1) this chapter; or

(2) the Act.

(l) Before a licensee provides a digitally prearranged remote service, the remote service business and the licensee must ensure that all implements and supplies have cleaned, disinfected, and sanitized or sterilized department-approved disinfectants and in accordance with the requirements of the Act and this chapter.

(m) A remote service business and licensee performing remote services must ensure compliance with all safety and sanitations requirements related to the digitally prearranged remote services being provided and in accordance with the Act and this chapter.

(n) A remote service business shall maintain accurate records and information showing compliance with this chapter and the Act and must make these records available to the department upon request.

§83.80. Fees.

(a) - (b) (No changes.)

(c) Substantial equivalence [Reciprocity] or Endorsement Fee--\$50

(d) - (l) (No change.)

§83.120. Technical Requirements--Curriculum Standards.

(a) Operator Curricula.

Figure: 16 TAC §83.120(a)

[Figure: 16 TAC §83.120(a)]

(b) Specialist Curricula.

Figure: 16 TAC §83.120(b)

[Figure: 16 TAC §83.120(b)]

(c) Instructor Curricula.

Figure: 16 TAC §83.120(c) (No change.)

(d) Distance Education.

(1) Schools offering distance education may not designate more than 25% of the total [curriculum] hours in each course as theory hours.

(2) A student may obtain the following distance education [curriculum] hours:

{(A) } [a maximum of 375 hours out of the 1,500 hour operator course;]

(A) [(B)] a maximum of 250 hours out of the 1,000 hour operator course;

(B) [(C)] a maximum of 75 hours out of the 300 hour class A barber to operator course;

(C) [(D)] maximum of 150 hours out of the 600 hour manicure course;

(D) [(E)] a maximum of 188 hours out of the 750 hour esthetician course;

(E) [(F)] a maximum of 300 hours out of the 1200 hour esthetician/manicurist course;

(F) [(G)] a maximum of 80 hours out of the 320 hour eyelash extension course;

(G) [(H)] a maximum of 75 hours out of the 300 hour hairweaving course;

(H) [(I)] a maximum of 188 hours out of the 750 hour instructor course; and

(I) [(J)] a maximum of 125 hours out of the 500 hour instructor course.

(e) Field Trips.

(1) (No change.)

(2) A student may obtain the following field trip [curriculum] hours:

[(A)] a maximum of 75 hours out of the 1,500 hours operator course;

(A) [(B)] a maximum of 50 hours out of the 1,000 hours operator course;

(B) [(C)] a maximum of 30 hours for the manicure course;

(C) [(D)] a maximum of 30 hours for the esthetician course;

(D) [(E)] a maximum of 60 hours for the esthetician/manicurist course;

(E) [(F)] a maximum of 15 hours for the eyelash extension course;

(F) [(G)] a maximum of 30 hours for students taking the 750 hour instructor course; and

(G) [(H)] a maximum of 20 hours for students taking the 500 hour instructor course.

(3) Unless provided by this subsection, field trips are not allowed for specialty courses.

(4) Students must be under the supervision of a licensed instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(5) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(6) No hours are allowed for travel.

(7) Prior department approval is not required.

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 December 18, 2019.

TRD-201904890

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 2, 2020

For further information, please call: (512) 463-8179



CHAPTER 130. PODIATRIC MEDICINE PROGRAM

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 130, Subchapter D, §§130.42, 130.44, and 130.45; Subchapter E, §§130.53, 130.56, and 130.58; Subchapter F, §130.60; and Subchapter G, §130.72; and new proposed rule Subchapter E, §130.59, regarding the Podiatry Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 130, implement Texas Occupations Code, Chapter 202, Podiatrists.

The proposed rules require practitioners to complete a human trafficking training course as required by HB 2059 and the newly-created Chapter 116 of the Occupations Code.

The proposed rules establish limits on prescribing opioids for acute pain, address electronic prescribing, and require continuing education on prescribing and monitoring controlled substances. These rules implement HB 2174, HB 3284, and HB 3285, which revised the Texas Controlled Substances Act in Chapter 481 of the Health and Safety Code.

The proposed rules also clarify the scope of delegation permitted and allow for a podiatrist to delegate to a qualified and properly trained podiatric medical assistant as outlined in HB 2847. Implementing a transfer from the Texas Medical Board to the Department's regulatory authority in HB 2847, the proposed rules provide for the regulation of podiatric medical radiological technicians and establish a fee for this license.

The proposed rules update the administrative penalties and sanctions for podiatrists, implementing HB 1899 and Occupations Code, Chapter 108, as well as penalties for improperly accessing the Texas Prescription Monitoring Program provided for in HB 3284 and the Texas Controlled Substances Act.

Finally, the proposed rules provide for the orderly transition of assessing continuing medical education hours as the Department transitions to biennial podiatric license terms. Biennial license terms were adopted in a previous rulemaking and made effective September 1, 2019, (44 TexReg 4725).

The proposed rules were presented to and discussed by the Podiatric Medical Examiners Advisory Board at its meeting on November 18, 2019. The Advisory Board made the following changes to the proposed rules: removed duplicate comma in §130.53(c). The Advisory Board voted and recommended that the proposed rules with changes be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §130.42 to require the completion of human trafficking prevention training for each renewal on or after

September 1, 2020. This training is required by Texas Occupations Code §116.003.

The proposed rules amend §130.44 to require two hours of continuing medical education (CME) related to prescribing and monitoring controlled substances prior to the first anniversary of podiatric medical licensure. The amendment requires one hour of CME covering best practices, alternative treatment options, and multimodal approaches to pain management for podiatrists whose practice involves the prescription and dispensation of opioids. Additionally, the amendment revises the CME due date requirements and provides a guide to transition for CME requirements as the Department moves podiatric license renewal to biennial periods.

The proposed rules amend §130.45, by deleting subsection (f), which was duplicative of a similar subsection in §130.44.

The proposed rules amend §130.53, by establishing regulatory authority over podiatric medical radiological technicians as created by HB 2847. The amendment also specifies a requirement of 60 x-rays for student training and requires completion of human trafficking prevention training for each renewal on or after September 1, 2020. The amendment deletes a reference to an act of moral turpitude as grounds for the Department to refuse renewal of a podiatric medical radiology technician license.

The proposed rules amend §130.56 to clarify the scope of delegated authority from a podiatrist to a podiatric medical assistant.

The proposed rules amend §130.58 to permit a podiatrist to designate an agent to communicate prescriptions to a pharmacist. Additionally, the amendment specifies that unauthorized access of the Texas Prescription Monitoring Program (PMP) is grounds for disciplinary action by the Department.

The proposed rules create new §130.59 that outlines the limits on the prescription of opioids to treat acute pain. The new section also requires the electronic prescription of all controlled substance prescriptions after September 1, 2021, and provides a list of exceptions for this requirement.

The proposed rules amend §130.60 to provide the fees applicable for Active Duty Military Members (\$0), and Podiatric Medical Radiological Technicians (\$25).

The proposed rules amend §130.72 to establish grounds for disciplinary actions and sanctions based upon improper access and dissemination of information obtained from the PMP. Additionally, the amendment incorporates denial of licensure, and suspension or revocation of licenses, for offenses identified in Chapter 108, Subchapter B, of the Occupations Code.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

The proposed rules will require human trafficking training developed or approved by the Texas Health and Human Service Commission, which will include a free training course option. The proposed rules implement legislation addressing the opioid crisis by adding continuing medical education requirements, e-prescribing, and prescribing limits for opioids. There are no anticipated additional costs to the State associated with the implementation or regulation for these changes.

The proposed rules bring regulation of Podiatric Medical Radiological Technicians fully under the Department's jurisdiction and allow for the Department to establish a fee for Podiatric Medical Radiological Technician registrations. Existing staff will only have a slightly higher workload renewing the registrations and therefore there will be no additional costs to the State.

Mr. Couvillon, has determined that for each year of the first five years the proposed rules are in effect, there is no estimated loss in revenue to the State because the proposed rules do not reduce or remove any fees that would reduce revenue. However, for each of the first five years the proposed rules are in effect there will be an estimated increase in state revenue. The Podiatric Medical Radiological Technician registration fee will result in roughly \$11,000 of revenue annually for the currently 438 Podiatric Medical Radiological Technicians that will be charged \$25.00 each for registration. This fee is less than the \$35.00 fee assessed by the previous agency (Texas State Board of Podiatric Medical Examiners) but currently there is no registration fee assessed by the Department.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of local governments because local governments are not responsible for the regulation of podiatry.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the proposed rules require certain health care practitioners who provide "direct patient care" to complete a human trafficking training course developed or approved by the Texas Health and Human Services Commission as a condition of license renewal, which will help raise human trafficking awareness to help prevent it. The proposed rules also establish limits on prescribing opioids for acute pain, require that prescriptions for controlled substances be submitted electronically rather than in writing, with certain exceptions, and requires continuing education practitioners related to approved procedures of prescribing and monitoring controlled substances to help end the opioid crisis. The proposed rules allow a podiatrist to delegate to a qualified and properly trained podiatric medical assistant and provides for the regulation of podiatric medical radiological technicians, to better maximize the services provided to patients.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be additional costs to persons who are required to comply with the proposed rules. There will be an annual fee of \$25.00 to the Department for Podiatric Medical Radiological Technicians. The addition of the new fee, which previously was not imposed by the Department due to lack of statutory authority, will result in additional costs for the first five years the proposed rules are in effect.

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

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

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government; however, the proposed rules fall under the exceptions for rules that are necessary to protect the health, safety, and welfare of the residents of this state and are necessary to implement legislation, under §2001.0045(c)(6), (9). Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

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

The proposed rules establish an annual \$25.00 fee for Podiatric Medical Radiological Technicians which is necessary for the administration of the program. Additionally, the proposed rules implement statutory provisions to address opioid abuse. The proposed rules also expand possible administrative penalties and sanctions to include misuse of the Prescription Monitoring Program database as required by Texas Occupations Code, Chapter 108.

The proposed rules expand the requirements for renewal of a podiatrist license to include the requirement to complete a human trafficking prevention training and also expand the standards for prescribing controlled substances and dangerous drugs to allow a podiatrist to designate an agent to communicate a prescription to a pharmacist.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules

do 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, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER D. DOCTOR OF PODIATRIC MEDICINE

16 TAC §§130.42, 130.44, 130.45

STATUTORY AUTHORITY

The rules are proposed under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The rules are also proposed under Texas Occupations Code, Chapter 108, which establishes the Department's authority to deny, suspend or revoke podiatrists for certain criminal convictions; Texas Occupations Code, Chapter 116, which requires the completion of human trafficking prevention training for health professions licensees; and Texas Health and Safety Code Chapter 481, which mandates certain continuing education for controlled substance prescribers, places limits on the prescription of opioids for acute pain, requires the submission of electronic prescriptions for controlled substances, and forbids unauthorized access to the PMP.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 108, 116, and 202; and Texas Health and Safety Code, Chapter 481.

No other statutes, articles, or codes are affected by the proposed rules.

§130.42. *Doctor of Podiatric Medicine License--Term; Renewal.*

(a) A Doctor of Podiatric Medicine license is valid for two years.

(b) To renew a Doctor of Podiatric Medicine license the licensee must:

- (1) submit a department-approved renewal application;
- (2) complete all required continuing medical education hours as required by §130.44; and
- (3) pay the required fee.

(c) For each license renewal on or after September 1, 2020, a Doctor of Podiatric Medicine must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

§130.44. *Continuing Medical Education--General Requirements.*

(a) Each person licensed to practice podiatric medicine in the State of Texas is required to have 50 hours of continuing medical education (CME) every two years for the renewal of the license to practice podiatric medicine. One hour of training is equal to one hour of CME.

(b) Two hours of the required 50 hours of department approved CME shall be a course, class, seminar, or workshop in: Ethics in the Delivery of Health Care Services and/or Rules and Regulations pertaining to Podiatric Medicine in Texas. Topics on Human Trafficking Prevention, Healthcare Fraud, Professional Boundaries, Practice Risk Management or Podiatric Medicine related Ethics or Jurisprudence courses, Abuse and Misuse of Controlled Substances, Opioid Prescription Practices, and/or Pharmacology, including those sponsored by an entity approved by CPME, APMA, APMA affiliated organizations, AMA, AMA affiliated organizations, or governmental entities, or the entities described in subsections (e) [(e)] and (f) [(f)] are acceptable.

(c) Each person initially licensed to practice podiatric medicine in the State of Texas is required to complete two hours of continuing medical education related to approved procedures of prescribing and monitoring controlled substances prior to the first anniversary of date the license was originally issued.

(d) For each person licensed to practice podiatric medicine in the State of Texas whose practice includes prescription or dispensation of opioids shall annually attend at least one hour of continuing medical education covering best practices, alternative treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments.

(e) [(e)] A licensee shall receive credit for each hour of podiatric medical meetings and training sponsored by APMA, APMA affiliated organizations, TPMA, state, county or regional podiatric medical association podiatric medical meetings, university sponsored podiatric medical meetings, hospital podiatric medical meetings or hospital podiatric medical grand rounds, medical meetings sponsored by the Foot & Ankle Society or the orthopedic community relating to foot care, and others at the discretion of the Board. A practitioner may receive credit for giving a lecture, equal to the credit that a podiatrist attending the lecture obtains.

(f) [(f)] A licensee shall receive credit for each hour of training for non-podiatric medical sponsored meetings that are relative to podiatric medicine and department approved. The department may assign credit for hospital grand rounds, hospital CME programs, corporate sponsored meetings, and meetings sponsored by the American Medical Association, the orthopedic community, the American Diabetes Association, the Nursing Association, the Physical Therapy Association, and others if approved.

(g) [(g)] It shall be the responsibility of the licensee to ensure that all CME hours being claimed meet the standards for CME as set by the commission. Practice management, home study and self-study programs will be accepted for CME credit hours only if the provider is approved by the Council on Podiatric Medical Education. The licensee may obtain up to, but not exceed twenty (20) hours of the aforementioned hours per biennium.

(h) [(h)] Cardiopulmonary Resuscitation (CPR) certification is eligible for up to three (3) hours of CME credit and Advanced Cardiac Life Support (ACLS) certification for up to six (6) hours of CME credit. Practitioners may only receive credit for one, not both. No on-line CPR certification will be accepted for CME credit.

(i) [(i)] If a practitioner has an article published in a peer review journal, the practitioner may receive one (1) hour of CME credit for the article, with credit for the article being provided only once, regardless of the number of times or the number of journals in which the article is published.

(j) [(j)] With the exception of the allowed hours carried forward, the required 50 [These] hours of continuing medical education

must be obtained in a [the] 24-month period immediately preceding the date in [year for] which the license is to be renewed [was issued]. The 24-month [two-year] period will begin on the first full day of the month after the practitioner's date of renewal [November 1] and end [on October 31] two years later. [The year in which the 50-hour credit requirement must be completed after the original license is issued is every odd-numbered year if the original license was issued in an odd-numbered year and is every even-numbered year if the original license was issued in an even-numbered year.] A licensee who completes more than the required 50 hours during the preceding CME period may carry forward a maximum of ten (10) hours for the next renewal CME period.

(k) [(k)] The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(l) [(l)] The audit process shall be as follows:

(1) The department shall select for audit a random sample of license holders to ensure compliance with CME hours.

(2) If selected for an audit, the license holder shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the license holder's attendance, participation and completion of the continuing education.

(3) Failure to timely furnish this information within thirty (30) calendar days or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) If selected for continuing education audit during the renewal period, the license holder may renew and pay renewal fees.

(m) [(m)] Licensees that are deficient in CME hours must complete all deficient CME hours and current biennium CME requirement in order to maintain licensure.

(n) [(n)] Continuing education obtained as a part of a disciplinary action is not acceptable credit towards the total of fifty (50) hours required every two years.

(o) The 85th Texas Legislature enacted changes to Chapter 202, Occupations Code, providing the commission with authority to establish a one or two-year license term for Doctors of Podiatric Medicine licensees. See H.B. 3078, 85th Legislature, Regular Session (2017). The purpose of this transition rule is to provide guidance on how continuing medical education will be assessed when transitioning from a one to two-year license term. This rule applies only to licenses renewing on or after September 1, 2019. Beginning September 1, 2019, the department shall stagger the continuing medical education biennium of licenses as follows. Practitioners renewing in an odd-numbered year are to obtain 50 hours of CME for a 24-month period between 2019 and 2021; and for every 2-years thereafter in between renewal dates. Practitioners renewing in an even-numbered year are to obtain 50 hours of CME for a 24-month period between 2020 and 2022; and for every 2-years thereafter in between renewal dates. This rule expires on August 31, 2022.

§130.45. Continuing Medical Education--Exceptions and Allowances; Approval of Hours.

(a) Delinquency for continuing education may be allowed in cases of hardship as determined on an individual basis by the executive director. In cases of such hardships, hours of delinquency must be current at the end of a three-year period.

(b) Any practitioner not actively practicing podiatric medicine shall be exempt from these requirements; however, upon resuming practice of podiatric medicine, that person shall fulfill the requirements of the preceding year from the effective date prior to the resumption of practice.

(c) Any program approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association is acceptable to the department.

(d) Hours obtained in Colleges or Universities while working on a degreed or non-degreed program or an approved residency program by the Council on Podiatric Medical Education and providing these courses shall be of a medical nature, shall be considered as having fulfilled the requirements of continuing education hours for the fiscal year.

(e) Hours of continuing education submitted to the department for approval, must be certified by the Continuing Education Director of the institution or organization from which the hours were obtained, that he/she was in actual attendance for the specified period.

~~[(f) Holders of current Cardio-Pulmonary Resuscitation certificates are eligible for three (3) hours credit of continuing education or, current Advance Life Support Course certificates are eligible for six (6) hours credit of continuing education.]~~

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 December 18, 2019.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671



SUBCHAPTER E. PRACTITIONER RESPONSIBILITIES AND CODE OF ETHICS

16 TAC §§130.53, 130.56, 130.58, 130.59

STATUTORY AUTHORITY

The rules are proposed under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The rules are also proposed under Texas Occupations Code, Chapter 108, which establishes the Department's authority to deny, suspend or revoke podiatrists for certain criminal convictions; Texas Occupations Code, Chapter 116, which requires the completion of human trafficking prevention training for health professions licensees; and Texas Health and Safety Code Chapter 481, which mandates certain continuing education for controlled substance prescribers, places limits on the prescription of opioids for acute pain, requires the submission of electronic prescriptions for controlled substances, and forbids unauthorized access to the PMP.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 108, 116, and 202; and Texas Health and Safety Code, Chapter 481.

No other statutes, articles, or codes are affected by the proposed rules.

§130.53. Podiatric Medical Radiological Technicians.

(a) This section does not apply to persons certified by the Texas Medical Board under the Medical Radiologic Technologist Certification Act who are Non-Certified Technicians (NCTs), Certified Medical Radiologic Technologists (MRTs) or Limited Medical Radiologic Technologists (LMRTs).

(b) It is the practitioner's responsibility to ensure that all individuals wishing to perform podiatric radiological procedures are properly trained and apply for registration with the department as a podiatric medical radiological technician.

(c) Podiatric equipment training [Training] course providers, and standards for curricula and instructors must be approved by the department [Texas Medical Board].

(d) Podiatric medical radiological technician applicants must:

(1) be 18 years of age or older;

(2) successfully complete the following 20 hours of clinical and didactic training requirements and provide proof of completion to the department:

(A) 5 class hours and 5 out of class hours of radiation safety and protection for the patient, self, and others;

(B) 1 class and 2 out of class hours of radiographic equipment used in podiatric medicine, including safety standards, operation, and maintenance;

(C) 1 class and 4 out of class hours in podiatric radiologic procedures, imaging production and evaluation; and

(D) 1 class and 1 out of class hour in methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects; and

(3) submit a department-approved application.

(e) Out of classroom training hours must be verified by a supervising podiatrist and require the student to maintain a log demonstrating the successful production of 60 x-rays in the clinical setting overseen and signed by the supervising podiatrist.

(f) A podiatric medical radiological technician must hold a registration and may perform only podiatric radiological procedures.

(g) A podiatric medical radiological technician registrant shall perform radiological procedures only under the supervision of a practitioner physically present on the premises.

(h) A podiatric medical radiological technician registrant shall not perform any dangerous or hazardous procedures as identified by the Texas Medical Board.

(i) All registrants must comply with the safety rules of the Texas Department of State Health Services, Radiation Control Program relating to the control of radiation.

(j) Registration is valid for one year and must be renewed annually by submitting a department-approved application. For each registration renewal on or after September 1, 2020, a radiological technician must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(k) Registrants shall inform the department of any address change or change of supervising podiatric physician within two (2) weeks.

(l) The department may refuse to issue or renew a registration to an applicant or a podiatric medical radiological technician who:

(1) violates the Podiatric Medical Practice Act, the Rules, an order of the executive director or commission previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;

(2) violates the Medical Radiologic Technologist Certification Act, or the Rules promulgated by the Texas Medical Board;

(3) violates the Rules of the Texas Department of State Health Services for Control of Radiation;

(4) obtains, attempts to obtain, or uses a registration by bribery or fraud;

(5) engages in unprofessional conduct, including but not limited to, conviction of a crime or ~~commission~~ of any act that is in violation of the laws of the State of Texas if the act is connected with provision of health care~~]; and commission of an act of moral turpitude];~~

(6) develops or has an incapacity that prevents the practice of podiatric medical radiological technician with reasonable skill, competence, and safety to the public as a result of:

(A) an illness;

(B) drug or alcohol dependency; or habitual use of drug or intoxicating liquors; or

(C) another physical or mental condition;

(7) fails to practice in an acceptable manner consistent with public health and welfare;

(8) has disciplinary action taken against a radiological certification, permit, or registration in another state, or by another regulatory agency;

(9) engages in acts requiring registration under these rules without a current registration from the department;

(10) has had a registration revoked, suspended, or has received disciplinary action.

(m) The commission, executive director, or department, as appropriate, may suspend, revoke, or refuse to issue or renew the registration upon finding that a podiatric medical radiological technician has committed any offense listed in this section.

§130.56. General Authority to Delegate.

(a) A practitioner may delegate to a qualified and properly trained podiatric medical assistant [person] acting under the podiatrist's appropriate supervision any podiatric medical act that a reasonable and prudent podiatrist would find within the scope of sound medical judgment to delegate if:

(1) in the opinion of the delegating podiatrist, the act:

(A) can be properly and safely performed by the podiatric medical assistant [person] to whom the podiatric medical act is delegated; and

(B) is performed in its customary manner and not in violation of any other statute; and

~~(C) is not in violation of any other statute; and]~~

(2) the podiatric medical assistant [person] to whom the podiatric medical act is delegated ~~[delegation is made]~~ does not rep-

resent to the public that the podiatric medical assistant [person] is authorized to practice podiatric medicine.

(b) The delegating podiatrist ~~is~~ remains responsible for the podiatric medical acts of the podiatric medical assistant [person] performing the delegated medical acts.

(c) The department may determine whether:

(1) an act constitutes the practice of podiatric medicine; and[-]

(2) a podiatric medical act may be properly or safely delegated by podiatrists.

§130.58. Standards for Prescribing Controlled Substances and Dangerous Drugs.

(a) Podiatrists shall comply with all federal and state laws and regulations relating to the ordering and prescribing of controlled substances in Texas, including but not limited to requirements set forth by the United States Drug Enforcement Administration, United States Food & Drug Administration, Texas Health & Human Services Commission, Texas Department of Public Safety, Texas State Board of Pharmacy, and the department.

(b) A podiatrist may not prescribe a controlled substance except for a valid podiatric medical purpose and in the course of podiatric practice.

(c) A podiatrist may not confer upon and may not delegate prescriptive authority (the act of prescribing or ordering a drug or device) to any other person.

(d) A podiatrist may designate an agent to communicate a prescription to a pharmacist. A podiatrist who designates an agent shall provide a pharmacist on request with a copy of the podiatrist's written authorization for a designated agent to communicate a prescription and shall maintain at the podiatrist's usual place of business a list of the designated agents. The podiatrist remains personally responsible for the actions of the designated agent who communicates a prescription to a pharmacist.

~~(e) [(d)]~~ Responsible prescribing of controlled substances requires that a podiatrist consider certain elements prior to issuing a prescription, including, but not limited to:

(1) reviewing the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database;

(2) the patient's date of birth matches with proper identification;

(3) an initial comprehensive history and physical examination is performed;

(4) the Schedule II prescription copy is in the chart or record found for each prescription written; and

(5) alternative therapy (e.g. ultrasound, TENS) discussed and prescribed for the patient.

~~(f) [(e)]~~ Prior to prescribing opioids, benzodiazepines, barbiturates, or carisoprodol, a podiatrist shall review the patient's Schedule II, III, IV, and V prescription drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database. Failure to do so is grounds for disciplinary action by the department.

~~(g) [(f)]~~ Prior to prescribing any controlled substance, a podiatrist may review the patient's Schedule II, III, IV, and V prescription

drug history report by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database.

(h) ~~[(g)]~~ An employee of the podiatrist acting at the direction of the podiatrist may perform the function described in subsection (e) and (f) ~~[of this section]~~ so long as that employee acts in compliance with HIPAA and only accesses information related to a particular patient of the podiatrist.

(i) ~~[(h)]~~ A podiatrist or an employee of a podiatrist acting at the direction of the podiatrist may access the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database to inquire about the podiatrist's own Schedule II, III, IV, and V prescription drug activity.

(j) A podiatrist or an employee of a podiatrist acting at the direction of the podiatrist may not access the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database for reasons not directly related to a patient under their care. Unauthorized access is grounds for disciplinary action by the department.

(k) ~~[(i)]~~ If a podiatrist uses an electronic medical records management system (health information exchange) that integrates a patient's Schedule II, III, IV, and V prescription drug history data from the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database, a review of the electronic medical records management system (health information exchange) with the integrated data shall be deemed compliant with the review of the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database as required under §481.0764(a) of the Texas Health and Safety Code and these rules.

(l) ~~[(j)]~~ The duty to access a patient's Schedule II, III, IV, and V prescription drug history report through the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database as described in subsection (e) ~~[of this section]~~ does not apply in the following circumstances: (1) it is clearly noted in the patient's medical record that the patient has a diagnosis of cancer or is in hospice care; or (2) the podiatrist or an employee of the podiatrist makes a good faith attempt to access the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database but is unable to access the information because of circumstances outside the control of the podiatrist or an employee of the podiatrist and the good faith attempt and circumstances are clearly documented in the patient's medical record for prescribing a controlled substance.

(m) ~~[(k)]~~ Information obtained from the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database may be included in any form in the searched patient's medical record and is subject to any applicable state or federal confidentiality, privacy or security laws.

(n) ~~[(l)]~~ In accordance with Texas Health and Safety Code Chapter 483, Subchapter E., a podiatrist may prescribe an opioid antagonist to a person at risk of experiencing an opioid-related drug overdose or to a family member, friend, or other person in a position to assist the person who is at risk of experiencing an opioid-related drug overdose. A podiatrist who prescribes an opioid antagonist shall document the basis for the prescription in the medical record of the person who is at risk of experiencing an opioid-related drug overdose.

§130.59. Opioid Prescription Limits and Required Electronic Prescribing.

(a) In this section, "acute pain" means the normal, predicted, physiological response to a stimulus such as trauma, disease, and operative procedures. Acute pain is time limited and the term does not include:

(1) chronic pain;

(2) pain being treated as part of cancer care;

(3) pain being treated as part of hospice or other end-of-life care; or

(4) pain being treated as part of palliative care.

(b) For the treatment of acute pain, a podiatrist may not:

(1) issue a prescription for an opioid in an amount that exceeds a 10-day supply; or

(2) provide for a refill of an opioid.

(c) The 10-day limit does not apply to a prescription for an opioid approved by the United States Food and Drug Administration for the treatment of substance addiction that is issued by a practitioner for the treatment of substance addiction.

(d) After January 1, 2021, all controlled substances must be prescribed electronically except:

(1) in an emergency or in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure, in a manner provided for by the Texas State Board of Pharmacy rules;

(2) by a practitioner to be dispensed by a pharmacy located outside this state, in a manner provided for by the Texas State Board of Pharmacy rules;

(3) when the prescriber and dispenser are in the same location or under the same license;

(4) in circumstances in which necessary elements are not supported by the most recently implemented national data standard that facilitates electronic prescribing;

(5) for a drug for which the United States Food and Drug Administration requires additional information in the prescription that is not possible with electronic prescribing;

(6) for a non-patient-specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health emergency or in other circumstances in which the practitioner may issue a non-patient-specific prescription;

(7) for a drug under a research protocol;

(8) by a practitioner who has received a waiver under Section 481.0756 of the Texas Health and Safety Code from the requirement to use electronic prescribing; or

(9) under circumstances in which the practitioner has the present ability to submit an electronic prescription but reasonably determines that it would be impractical for the patient to obtain the drugs prescribed under the electronic prescription in a timely manner and that a delay would adversely impact the patient's medical condition.

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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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671



SUBCHAPTER F. FEES

16 TAC §130.60

STATUTORY AUTHORITY

The rules are proposed under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The rules are also proposed under Texas Occupations Code, Chapter 108, which establishes the Department's authority to deny, suspend or revoke podiatrists for certain criminal convictions; Texas Occupations Code, Chapter 116, which requires the completion of human trafficking prevention training for health professions licensees; and Texas Health and Safety Code Chapter 481, which mandates certain continuing education for controlled substance prescribers, places limits on the prescription of opioids for acute pain, requires the submission of electronic prescriptions for controlled substances, and forbids unauthorized access to the PMP.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 108, 116, and 202; and Texas Health and Safety Code, Chapter 481.

No other statutes, articles, or codes are affected by the proposed rules.

§130.60. Fees.

(a) Fees paid to the department are non-refundable.

(b) Fees are as follows:

- (1) Temporary Residency License (Initial and Renewal)--\$125
- (2) Extended Temporary License extension--\$50
- (3) Provisional License--\$125
- (4) Doctor of Podiatric Medicine Initial License--\$750
- (5) Doctor of Podiatric Medicine Renewal License--\$700
- (6) Voluntary Charity Care Status License (Initial and Renewal)--\$0
- (7) Active Duty Military Members--\$0
- (8) [(7)] Hyperbaric Oxygen Certificate--\$25
- (9) [(8)] Nitrous Oxide Registration--\$25
- (10) [(9)] Podiatric Medical Radiological Technicians--\$25 [\$0]
- (11) [(10)] Duplicate License/replacement license--\$25
- (12) [(11)] The fee for a criminal history evaluation letter is the fee prescribed under §60.42 [of this title] (relating to Criminal History Evaluation Letters).

(13) [(12)] A dishonored/returned check or payment fee is the fee prescribed under §60.82 [of this title] (relating to Dishonored Payment Device).

(14) [(13)] Late renewal fees for licenses issued under this chapter are provided under §60.83 [of this title] (relating to Late Renewal Fees).

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

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SUBCHAPTER G. ENFORCEMENT

16 TAC §130.72

STATUTORY AUTHORITY

The rules are proposed under Texas Occupations Code, Chapters 51 and 202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The rules are also proposed under Texas Occupations Code, Chapter 108, which establishes the Department's authority to deny, suspend or revoke podiatrists for certain criminal convictions; Texas Occupations Code, Chapter 116, which requires the completion of human trafficking prevention training for health professions licensees; and Texas Health and Safety Code Chapter 481, which mandates certain continuing education for controlled substance prescribers, places limits on the prescription of opioids for acute pain, requires the submission of electronic prescriptions for controlled substances, and forbids unauthorized access to the PMP.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51, 108, 116, and 202; and Texas Health and Safety Code, Chapter 481.

No other statutes, articles, or codes are affected by the proposed rules.

§130.72. Administrative Penalties and Sanctions.

(a) If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 202, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapters 51 and 202, any associated rules, and consistent with the department's enforcement plan.

(b) A person authorized to receive information by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database may not disclose or use the information in a manner not authorized by law.

(c) A person authorized to receive information by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database commits an offense if the person discloses or uses the information in a manner not authorized by law.

(d) A person authorized to receive information by accessing the Texas State Board of Pharmacy's - Texas Prescription Monitoring Program (PMP) database commits an offense if the person makes a material misrepresentation or fails to disclose a material fact in the request for information.

(e) The department shall deny an application for license, and shall revoke the license of a person licensed under Chapter 202, Texas Occupations Code, as required by Chapter 108, Subchapter B, Texas Occupations Code.

(f) A person whose application for licensure has been denied, or whose license has been revoked, pursuant to Texas Occupations Code, Chapter 108, Subchapter B may reapply or seek reinstatement as provided by that subchapter.

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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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

The State Board for Educator Certification (SBEC) proposes amendments to §§230.21, 230.33, 230.36, 230.55, 230.104, and 230.105, concerning professional educator preparation and certification. The proposed amendments would implement the statutory requirements of Senate Bill (SB) 1839 and House Bills (HBs) 2039 and 3349, 85th Texas Legislature, Regular Session, 2017, and HB 3, 86th Texas Legislature, 2019. The proposed amendment to Subchapter C, Assessment of Educators, would reduce the amount of time for computer- and paper-based examination retakes from 45 to 30 days and would update the figure specifying the required test for issuance of the standard certification, including the removal of the master teacher certification class and the Principal: Early Childhood-Grade 12 certificate and the addition of Early Childhood-Grade 3 (EC-3), Science of Teaching Reading, and Trade and Industrial Workforce Training. The proposed amendment to Subchapter D, Types and Classes of Certificates Issued, would require the English as a Second Language Supplemental assessment for issuance of an intern certificate obtained through the intensive pre-service route. The proposed amendment to Subchapter E, Educational Aide Certificate, would allow the Educational Aide I certificate to be

issued to high school students who have completed certain career and technical education courses. Proposed changes to Subchapter G, Certificate Issuance Procedures, would clarify that requests for certificate corrections be submitted to the Texas Education Agency (TEA) within six weeks from the original date of issuance. The proposed changes would also implement the requirement specified in statute that certified classroom teachers must complete training prior to receiving test approval for the Early Childhood: Prekindergarten-Grade 3 certificate.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 230 specify the testing requirements for certification and the additional certificates based on examination. These requirements ensure that educators are qualified and professionally prepared to instruct the schoolchildren of Texas. The following provides a description of changes to Chapter 230, Subchapters C, D, E, and G.

Subchapter C, §230.21. Assessment of Educators

The proposed amendment to §230.21(a)(1)(D) would reduce the amount of time between computer- and paper-based retakes from 45 days to 30 days. The proposed amendment is in response to stakeholder feedback from the July 2019 SBEC meeting and would allow candidates an additional testing window in the summer to meet certification requirements.

The proposed amendment to §230.21(e) would amend Figure: 19 TAC §230.21(e) to comply with HB 3 by removing all master teacher certificates from the current list of active certifications and by requiring educators that teach any grade level from Prekindergarten-Grade 6 to demonstrate proficiency in the science of teaching reading on a certification examination beginning January 1, 2021. The amendment would add 293 Science of Teaching Reading TExES as a required content pedagogy test for the following certifications: §233.2, Core Subjects: Early Childhood-Grade 6; §233.2, Core Subjects: Grades 4-8; §233.2, Early Childhood: Prekindergarten-Grade 3; §233.3, English Language Arts and Reading: Grades 4-8; §233.3, English Language Arts and Reading/Social Studies: Grades 4-8.

Additionally, the proposed amendment to §230.21(e) would amend Figure: 19 TAC §230.21(e) to remove §241.60, Principal: Early Childhood-Grade 12, as new principal certifications were created, effective December 23, 2018; and to provide for a transition from the current content tests to the anticipated content pedagogy tests as follows:

Figure: Preamble

The proposed amendment to §230.21(e) would also amend Figure: 19 TAC §230.21(e) to phase out retired assessments by removing the retired 183 Braille TExES assessment for the §233.8, Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certification; comply with SB 1839 and HB 2039 to create the required assessments for the §233.2 Early Childhood: Prekindergarten-Grade 3 certification; and to comply with HB 3349 to create the required assessments for the new §233.14 Trade and Industrial Workforce Training: Grades 6-12 certification.

Subchapter D, §230.33, Classes of Certificates, and §230.36, Intern Certificates

The proposed amendment to §230.33(b)(5) would align with the mandate in HB 3 to repeal the master teacher certificate class, giving those certificates contained therein a "legacy" designation for educator assignment purposes until they expire.

The proposed amendment to §230.36(f)(2)(C) would add the requirement of the English as Second Language (ESL) Supplemental assessment for issuance of the intern certificate through the intensive pre-service route. This will ensure that teachers are ready to serve students in their classroom.

Subchapter E, §230.55. Certification Requirements for Educational Aide I

TEA staff in the divisions of Educator Certification, Instructional Support, and Career and Technical Education are working collaboratively to support the work associated with industry-based certifications. Industry certifications were designed to prepare students for success in postsecondary endeavors and are used for public school accountability.

The proposed amendment to §230.55 would add the word "either" to provide two possible paths to qualifying for an Educational Aide I certificate: a path for conventional high school graduates and an alternate path for high school students 18 years of age or older to attain educational industry experience while still in school. The alternate path to certification in proposed new §230.55(3) and (4) would allow students to earn Educational Aide I credentials after completing career and technical education courses and would allow schools to accurately reflect these students as "career ready" in their accountability measures.

Subchapter G, §230.104. Correcting a Certificate or Permit Issued in Error and §230.105. Issuance of Additional Certificates Based on Examination

The proposed amendment to §230.104(b) would add the requirement that if an entity incorrectly issues a certificate, TEA must receive a request to correct the error from the entity within six weeks. The proposed change also requires that educators inform the recommending educator preparation program (EPP) of any assignment change that would require the educator to be certified in a different certification area. This will ensure that teachers are teaching in their correct assignments. The proposed amendment would also apply to supplemental certifications, such as the Early Childhood-Grade 12 ESL certification, to ensure candidates are prepared to teach the students they serve.

The proposed amendment to §230.105(3) would comply with SB 1839 and HB 2039 to mandate that all candidates complete training requirements for issuance of an Early Childhood: Prekindergarten-Grade 3 certification. Remaining paragraphs would be renumbered.

FISCAL IMPACT: Ryan Franklin, associate commissioner for educator leadership and quality, has determined that there is an anticipated fiscal impact on state government (TEA) required to comply with the proposal. The TEA estimates a cost of \$128,909 for each of the next five fiscal years (FYs) from FYs 2020-2024 for the development and ongoing administrative costs needed to maintain assessments. The TEA will receive an \$11 remittance for each Science of Teaching Reading test taken for an estimated total of \$214,522 for FY 2020 and \$321,783 for FYs 2021-2024. The TEA will receive \$17 per Educational Aide I application; this fee will be offset by the cost to process the certification. The TEA anticipates 4,872 additional Educational Aide I certifications for an estimated total of \$82,824 for FYs 2020-2024. There may be an anticipated fiscal impact on local government if a school district chooses to pay the \$17 Educational Aide I application fee. Assuming districts pay for each application, the total cost would be \$82,824 for each year of FYs 2020-2024. There is currently

state funding set aside to reimburse local educational agencies for fees paid for by industry-based certifications.

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 (TGC), §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does impose a cost on regulated persons, another state agency, a special district, or a local government, and, therefore, is subject to TGC, §2001.0045. However, the proposal is exempt from TGC, §2001.0045, as provided under that statute, because the proposal is necessary to implement legislation. In addition, the proposal is necessary to ensure that certified Texas educators are competent to educate Texas students and, therefore, necessary to protect the safety and welfare of the residents of this state.

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

GOVERNMENT GROWTH IMPACT: The TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation in 19 TAC §230.55 by allowing the SBEC to issue an Educational Aide I certificate to high school students seeking industry-based credentials. The proposed amendment to §230.105 would expand an existing regulation by adding the Early Childhood: Prekindergarten-Grade 3 certification as an ineligible certification for certification by examination. The proposed rulemaking would limit an existing regulation, §230.21(a)(1)(D), by reducing the number of days between computer- and paper-based examination retakes from 45 to 30 days. The proposed rulemaking would require an increase in fees paid to the agency for each Science of Teaching Reading assessment taken (\$11 per assessment), but those fees would be offset by the increased costs to the agency of developing and administering the new test. The proposed rulemaking would require an increase in fees paid to the agency for each additional Educational Aide I certificate issued, but those fees would be offset by the cost to process the certification. The proposed rulemaking would create a new regulation in §230.104 by requiring that entities notify the agency within six weeks of certificate issuance for purposes of correction to an intern or probationary certificate and educators to notify their EPPs when their assignments change in a way that could impact the legal appropriateness of their certification. The proposed rulemaking would repeal an existing regulation as it eliminates the former principal certification and the master teacher class of certifications to implement HB 3, 86th Texas Legislature, 2019.

The proposed rulemaking would not create or eliminate a 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 a decrease in fees paid to the agency; 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. Franklin has determined that for each year of the first five years the proposal is in effect, the public and student benefit anticipated as a result of the proposed amendments would help broaden the pool of potential educators in Texas by expanding the Educational Aide I certificate and ensure that educator candidates are demonstrating proficiency in research-based reading strategies and on rigorous and relevant assessments.

Future teacher candidates seeking certification in Early Childhood: Prekindergarten-Grade 3, Core Subjects: Early Childhood-Grade 6, Core Subjects: Grades 4-8, English Language Arts and Reading: Grades 4-8 and English Language Arts and Reading/Social Studies: Grades 4-8 will be required to take the Science of Teaching Reading assessment. Based on 2017-2018 data, TEA staff anticipates this will impact about 29,253 test attempts with the cost of each test being \$136 for a total of \$3,978,408 starting FY 2020. Future candidates seeking certification in School Counselor will be required to take a certification assessment that has both selected-response and constructed-response questions. Based on the 2017-2018 data, TEA staff anticipates this impact to be about 1,633 test attempts with the cost of each test increasing from \$116 to \$200 for a total of \$137,172 starting FY 2021. Future candidates seeking certification in Educational Diagnostician will be required to take a certification assessment that has both selected-response and constructed-response questions. Based on the 2017-2018 data, TEA staff anticipates this impact to be about 625 test attempts with the cost of each test increasing from \$116 to \$200 for a total of \$52,500 starting FY 2020. Future teacher candidates for Trade and Industrial Education 6-12 and Early Childhood-12 Physical Education will be required to take a certification assessment that has both selected-response and constructed-response questions. Based on the 2017-2018 data, TEA staff anticipates this impact to be about 3,895 test attempts with the cost of each test increasing from \$116 to \$136 for a total of \$77,900 starting FY 2021. Future teacher candidates for English Language Arts and Reading: Grades 4-8 will be required to take a certification assessment that has both selected-response and constructed-response questions. Based on the 2017-2018 data, TEA staff anticipates this impact to be about 2,556 test attempts with the cost of each test increasing from \$116 to \$136 for a total of \$51,120 starting FY 2021. Based on 2018-2019 Public Education Information Management System (PEIMS) data, the anticipated number of candidates that would meet the new educational aide requirements would be 4,872. Each application would cost \$17 for a total of \$82,824 per FY starting FY 2020.

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

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff 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 January 3, 2020 and ends February 3, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/Proposed_State_Board_for_Educator_Certification_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal at the February 21, 2020 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act

must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, associate commissioner for educator leadership and quality, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 3, 2019.

SUBCHAPTER C. ASSESSMENT OF EDUCATORS

19 TAC §230.21

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC) §21.041(b)(1), (2), and (4), which requires the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a) as amended by Senate Bills (SB) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.048, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which states that the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.050(a), which states that a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), as amended by House Bill (HB) 3217, 86th Texas Legislature, 2019, which states that the SBEC shall provide for a minimum number of semester credit hours for field-based experience or internship; TEC, §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §21.051, as amended by Senate Bill 1839, 85th Texas Legislature, Regular Session, 2017, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; TEC, §22.064, as amended by HB 3, 86th Texas Legislature, 2019, which requires the SBEC to designate all Master Teacher certificates as Legacy Master Teacher; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under TEC, Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states that a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(b)(1), (2), and

(4); 21.044(a), as amended by Senate Bills (SB) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017; 21.048, as amended by HB 3, 86th Texas Legislature, 2019; 21.050(a); 21.050(b), as amended by House Bill (HB) 3217, 86th Texas Legislature, 2019; 21.050(c); 21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017; 22.064, as amended by HB 3, 86th Texas Legislature, 2019; 22.082; and Texas Occupation Code, §54.003.

§230.21. *Educator Assessment.*

(a) A candidate seeking certification as an educator must pass the examination(s) required by the Texas Education Code (TEC), §21.048, and the State Board for Educator Certification (SBEC) in §233.1(e) of this title (relating to General Authority) and shall not retake an examination more than four times, unless the limitation is waived for good cause. The burden of proof shall be upon the candidate to demonstrate good cause.

(1) For the purposes of the retake limitation described by the TEC, §21.048, an examination retake is defined as a second or subsequent attempt to pass any examination required for the issuance of a certificate, including an individual core subject examination that is part of the overall examination required for the issuance of a Core Subjects certificate as described in §233.2 of this title (relating to Early Childhood; Core Subjects).

(A) A canceled examination score is not considered an examination retake.

(B) An examination taken by an educator during a pilot period is not considered part of an educator's five-time test attempt limit.

(C) Pursuant to TEC, §21.0491(d), the limit on number of test attempts does not apply to the trade and industrial workforce training certificate examination prescribed by the SBEC.

(D) A candidate who fails a computer- or paper-based examination cannot retake the examination before 30 [45] days have elapsed following the candidate's last attempt to pass the examination.

(2) Good cause is:

(A) the candidate's highest score on an examination is within one conditional standard error of measurement (CSEM) of passing, and the candidate has completed 50 clock-hours of educational activities. CSEMs will be published annually on the Texas Education Agency (TEA) website;

(B) the candidate's highest score on an examination is within two CSEMs of passing, and the candidate has completed 100 clock-hours of educational activities;

(C) the candidate's highest score on an examination is within three CSEMs of passing, and the candidate has completed 150 clock-hours of educational activities;

(D) the candidate's highest score on an examination is not within three CSEMs of passing, and the candidate has completed 200 clock-hours of educational activities;

(E) if the candidate needs a waiver for more than one of the individual core subject examinations that are part of the overall examination required for the issuance of a Core Subjects certificate, the candidate has completed the number of clock-hours of educational activities required for each individual core subject examination as described in subparagraphs (A)-(D) of this paragraph up to a maximum of 300 clock-hours. The number of clock-hours for each examination may be divided equally based on the number of examinations in the

waiver request, but the number of clock-hours for an examination shall not be less than 50; or

(F) if a CSEM is not appropriate for an examination, the TEA staff will identify individuals who are familiar and knowledgeable with the examination content to review the candidate's performance on the five most recent examinations, identify the deficit competency or competencies, and determine the number of clock-hours of educational activities required.

(3) Educational activities are defined as:

(A) institutes, workshops, seminars, conferences, interactive distance learning, video conferencing, online activities, undergraduate courses, graduate courses, training programs, in-service, or staff development given by an approved continuing professional education provider or sponsor, pursuant to §232.17 of this title (relating to Pre-Approved Professional Education Provider or Sponsor) and §232.19 of this title (relating to Approval of Private Companies, Private Entities, and Individuals), or an approved educator preparation program (EPP), pursuant to §228.10 of this title (relating to Approval Process); and

(B) being directly related to the knowledge and skills included in the certification examination competency or competencies in which the candidate answered less than 70 percent of competency questions correctly. The formula for identifying a deficit competency is the combined total of correct answers for each competency on the five most recent examinations divided by the combined total of questions for each competency on the five most recent examinations.

(4) Documentation of educational activities that a candidate must submit includes:

(A) the provider, sponsor, or program's name, address, telephone number, and email address. The TEA staff may contact the provider, sponsor, or program to verify an educational activity;

(B) the name of the educational activity (e.g., course title, course number);

(C) the competency or competencies addressed by the educational activity as determined by the formula described in paragraph (3)(B) of this subsection;

(D) the provider, sponsor, or program's description of the educational activity (e.g., syllabus, course outline, program of study); and

(E) the provider, sponsor, or program's written verification of the candidate's completion of the educational activity (e.g., transcript, certificate of completion). The written verification must include:

(i) the provider, sponsor, or program's name;

(ii) the candidate's name;

(iii) the name of the educational activity;

(iv) the date(s) of the educational activity; and

(v) the number of clock-hours completed for the educational activity. Clock-hours completed before the most recent examination attempt or after a request for a waiver is submitted shall not be included. One semester credit hour earned at an accredited institution of higher education is equivalent to 15 clock-hours.

(5) To request a waiver of the limitation, a candidate must meet the following conditions:

(A) the candidate is otherwise eligible to take an examination. A candidate seeking a certificate based on completion of an EPP must have the approval of an EPP to request a waiver;

(B) beginning September 1, 2016, the candidate pays the non-refundable waiver request fee of \$160;

(C) the candidate requests the waiver of the limitation in writing on forms developed by the TEA staff; and

(D) the request for the waiver is postmarked not earlier than:

(i) 45 calendar days after an unsuccessful attempt at the fourth retake of an examination as defined in the TEC, §21.048; or

(ii) 90 calendar days after the date of the most recent denied waiver of the limitation request; or

(iii) 180 calendar days after the date of the most recent unsuccessful examination attempt that was the result of the most recently approved request for waiver of the limitation.

(6) The TEA staff shall administratively approve each application that meets the criteria specified in paragraphs (2)-(5) of this subsection.

(7) An applicant who does not meet the criteria in paragraphs (2)-(5) of this subsection may appeal to the SBEC for a final determination of good cause. A determination by the SBEC is final and may not be appealed.

(b) A candidate seeking a standard certificate as an educator based on completion of an approved EPP may take the appropriate certification examination(s) required by subsection (a) of this section only at such time as the EPP determines the candidate's readiness to take the examinations, or upon successful completion of the EPP, whichever comes first.

(c) The holder of a lifetime Texas certificate effective before February 1, 1986, must pass examinations prescribed by the SBEC to be eligible for continued certification, unless the individual has passed the Texas Examination of Current Administrators and Teachers (TECAT).

(d) The commissioner of education approves the satisfactory level of performance required for certification examinations, and the SBEC approves a schedule of examination fees and a plan for administering the examinations.

(e) The appropriate examination(s) required for certification are specified in the figure provided in this subsection.

Figure: 19 TAC §230.21(e)
[Figure: 49 TAC §230.21(e)]

(f) Scores from examinations required under this title must be made available to the examinee, the TEA staff, and, if appropriate, the EPP from which the examinee will seek a recommendation for certification.

(g) The following provisions concern ethical obligations relating to examinations.

(1) An educator or candidate who participates in the development, design, construction, review, field testing, scoring, or validation of an examination shall not reveal or cause to be revealed the contents of the examination to any other person.

(2) An educator or candidate who administers an examination shall not:

(A) allow or cause an unauthorized person to view any part of the examination;

(B) copy, reproduce, or cause to be copied or reproduced any part of the examination;

(C) reveal or cause to be revealed the contents of the examination;

(D) correct, alter, or cause to be corrected or altered any response to a test item contained in the examination;

(E) provide assistance with any response to a test item contained in the examination or cause assistance to be provided; or

(F) deviate from the rules governing administration of the examination.

(3) An educator or candidate who is an examinee shall not:

(A) copy, reproduce, or cause to be copied or reproduced any test item contained in the examination;

(B) provide assistance with any response to a test item contained in the examination, or cause assistance to be provided;

(C) solicit or accept assistance with any response to a test item contained in the examination;

(D) deviate from the rules governing administration of the examination; or

(E) otherwise engage in conduct that amounts to cheating, deception, or fraud.

(4) An educator, candidate, or other test taker shall not:

(A) solicit information about the contents of test items on an examination that the educator, candidate, or other test taker has not already taken from an individual who has had access to those items, or offer information about the contents of specific test items on an examination to individuals who have not yet taken the examination;

(B) fail to pay all test costs and fees as required by this chapter or the testing vendor; or

(C) otherwise engage in conduct that amounts to violations of test security or confidentiality integrity, including cheating, deception, or fraud.

(5) A person who violates this subsection is subject to:

(A) sanction, including, but not limited to, disallowance and exclusion from future examinations either in perpetuity or for a period of time that serves the best interests of the education profession, in accordance with the provisions of the TEC, §21.041(b)(7), and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases); and/or

(B) denial of certification in accordance with the provisions of the TEC, §21.041(b)(7), and Chapter 249 of this title; and/or

(C) voiding of a score from an examination in which a violation specified in this subsection occurred as well as a loss of a test attempt for purposes of the retake limit in subsection (a) of this section.

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

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SUBCHAPTER D. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §230.33, §230.36

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC) §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.031(b), which states that the SBEC shall ensure that all candidates for certification or renewal of certification should demonstrate the knowledge and skills necessary to improve the performance of a diverse student population; TEC, §21.041(b)(1)-(5), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and requires the SBEC to propose rules that include requirements for educators that hold a similar certification issued by another state or foreign country; TEC, §21.041(b)(9), which requires the SBEC to propose rules for the regulation of continuing education requirements; TEC, §21.051, as amended by Senate Bill 1839, 85th Texas Legislature, Regular Session, 2017, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; TEC, §22.064, as amended by House Bill, 86th Texas Legislature, 2019, which requires the SBEC to designate all Master Teacher certificates as Legacy Master Teacher; TEC, §22.0831(c), which requires SBEC to review the national criminal history of a person seeking certification; and TEC, §22.0831(f)(1) and (2), which state that SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.003(a); 21.031(a); 21.031(b); 21.041(b)(1)-(5) and (9); 21.051, as amended by Senate Bill 1839, 85th Texas Legislature, Regular Session, 2017; 22.064, as amended by House Bill, 86th Texas Legislature, 2019; 22.0831(c); and TEC, §22.0831(f)(1) and (2).

§230.33. *Classes of Certificates.*

(a) "Class of certificates" means a certificate with the following characteristics:

- (1) specific job duties or functions associated with the certificate;
- (2) standards established by the State Board for Educator Certification (SBEC) for the issuance of the certificate; and
- (3) comprehensive examination(s) prescribed by the SBEC, as specified in §230.21 of this title (relating to Educator Assessment).

(b) Classes of certificates include the following:

- (1) superintendent;
- (2) principal;
- (3) classroom teacher (categories of classroom teaching certificates are described in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates));
- (4) reading specialist;
- (5) legacy master teacher [~~master teacher~~];
- (6) school librarian;
- (7) school counselor; and
- (8) educational diagnostician.

§230.36. *Intern Certificates.*

(a) General provisions.

(1) Certificate classes. An intern certificate may be issued for any class of certificate except educational aide.

(2) Requirement to hold an intern certificate. A candidate seeking certification as an educator must hold an intern certificate while participating in an internship through an approved educator preparation program (EPP).

(b) Requirements for issuance. An intern certificate may be issued to a candidate seeking certification as an educator who meets the conditions and requirements prescribed in this subsection.

(1) Bachelor's degree. Except as otherwise provided in rules of the State Board for Educator Certification related to certain career and technical education certificates based on skill and experience, the candidate must hold a bachelor's degree or higher from an accredited institution of higher education. An individual who has earned a degree outside the United States must provide an original, detailed report or course-by-course evaluation for all college-level credits prepared by a foreign credential evaluation service recognized by the Texas Education Agency (TEA). The evaluation must verify that the individual holds, at a minimum, the equivalent of a bachelor's degree issued by an accredited institution of higher education in the United States.

(2) General certification requirements. The candidate must meet the general certification requirements prescribed in §230.11 of this title (relating to General Requirements).

(3) Fee. The candidate must pay the fee prescribed in §230.101 of this title (relating to Schedule of Fees for Certification Services).

(4) Fingerprints. The candidate must submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and the Texas Education Code (TEC), §22.0831.

(c) Conditions. The validity and effectiveness of an intern certificate is subject to the following conditions.

(1) Internship. The holder of an intern certificate must be a participant in good standing of an approved Texas EPP, serving in an acceptable, paid internship supervised by the EPP.

(2) Inactive status. An intern certificate will become inactive 30 calendar days after the holder's separation from the school assignment or the EPP. The unexpired term of an intern certificate may be reactivated if the holder satisfies the requirements specified in this section.

(3) Term of an intern certificate. An intern certificate shall be valid for one 12-month period from the date of issuance.

(4) Limit on preliminary certifications and permits. Without obtaining standard certification, an individual may not serve for more than three 12-month periods while holding any combination of the following:

(A) intern certificates, limited to one 12-month period maximum, as described in this subsection;

(B) probationary certificates, limited to two 12-month periods maximum, as specified in §230.37 of this title (relating to Probationary Certificates)

(C) emergency permits as specified in Subchapter F of this chapter (relating to Permits); or

(D) one-year certificates as specified in Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries).

(5) Reduction in force exception. If an educator is employed under an intern certificate and is terminated or resigns in lieu of termination before the end of the school year due to a reduction in force, that intern term shall not count as one of the three years referenced in paragraph (4) of this subsection.

(d) Testing requirements for issuance of an intern certificate. Beginning September 1, 2017, a candidate must meet the subject matter knowledge requirements for issuance of an intern certificate to serve an internship in a classroom teacher assignment for each subject area to be taught.

(1) To meet the subject matter knowledge requirements to be issued an intern certificate for an internship in a classroom teacher assignment on or after September 1, 2017, a candidate must pass all of the appropriate content pedagogy examinations, as prescribed in Subchapter C of this chapter.

(2) To meet the subject matter knowledge requirements to be issued an intern certificate for an internship in a career and technical education classroom teacher assignment that is based on skill and experience on or after September 1, 2017, a candidate must satisfy the requirements for that subject area contained in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)) and pass the appropriate content pedagogy examination(s), as prescribed in Subchapter C of this chapter (relating to Assessment of Educators).

(e) Intern certificate in a certification class other than classroom teacher. An intern certificate may be issued for assignment as a superintendent, principal, reading specialist, master teacher, school librarian, school counselor, and educational diagnostician to an individual who meets the applicable requirements prescribed in subsection (b) of this section and who also meets the requirements prescribed in this subsection.

(1) An applicant for an intern certificate in a certification class other than classroom teacher must meet all requirements established by the recommending EPP, which shall be based on the qualifications and requirements for the class of certification sought and the duties to be performed by the holder of an intern certificate in that class.

(2) The individual must have also been:

(A) accepted and enrolled to participate in a Texas EPP that has been approved to prepare candidates for the certificate sought; and

(B) assigned in the certificate area being sought in a Texas school district, open-enrollment charter school, or, pursuant to §228.35 of this title (relating to Preparation Program Coursework and/or Training), other school approved by the TEA.

(3) The holder of an intern certificate in a certification class other than classroom teacher is subject to all terms and conditions of an intern certificate prescribed in subsection (c) of this section.

(4) The following provisions apply to the intern certificate for Principal as Instructional Leader.

(A) During the transition period of December 1, 2018 through September 1, 2019, the SBEC may issue an intern certificate to a candidate who meets the requirements specified in paragraphs (1)-(3) of this subsection.

(B) Effective September 1, 2019, the SBEC may issue an intern certificate to a candidate who meets requirements specified in paragraphs (1)-(3) of this subsection and has passed the Principal as Instructional Leader examination specified in Subchapter C of this chapter [~~relating to Assessment of Educators~~].

(f) Intern certificate for intensive pre-service. An intern certificate may be issued to an applicant who is admitted to an EPP intensive pre-service as prescribed in §228.33 of this title (relating to Intensive Pre-Service) on or after January 1, 2020, who:

(1) obtained a passing score on the aligned pedagogical rubric specified in §228.33 of this title;

(2) obtained a passing score, in accordance with §151.1001 of this title (relating to Passing Standards), on the required content certification (subject-matter only) examination and the following additional requirements for special education and bilingual assignments;

(A) Special education assignments also require a passing score, in accordance with §151.1001 of this title, on the TExES Special Education Supplemental examination prescribed in §230.21(e) of this title (relating to Educator Assessment); and

(B) Bilingual education assignments also require a passing score, in accordance with §151.1001 of this title, on the TExES Bilingual Target Language Proficiency examination or the related language proficiency examination prescribed in §230.21(e) of this title; and

(C) English as Second Language (ESL) assignments also require a passing score, in accordance with §151.1001 of this title, on the TExES ESL Supplemental examination or the related language proficiency examination prescribed in §230.21(e) of this title; and

(3) met the requirements as prescribed in subsections (a)-(c) of this section.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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



SUBCHAPTER E. EDUCATIONAL AIDE CERTIFICATE

19 TAC §230.55

STATUTORY AUTHORITY. The amendment implements Texas Education Code (TEC), §21.041(a), which states that the board may adopt rules as necessary for its own procedures; and TEC, §21.041(b)(1)-(4), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid.

CROSS REFERENCE TO STATUTE. The amendment is proposed under Texas Education Code (TEC) §§21.041(a) and (b)(1)-(4).

§230.55. *Certification Requirements for Educational Aide I.*

An applicant for an educational aide I certificate shall meet the requirements in either paragraphs (1) and (2) of this section or paragraphs (3) and (4) of this section as follows:

(1) hold a high school diploma, the equivalent of a high school diploma, or higher; and

(2) have experience working with students or parents as approved by the employing superintendent. Experience may be work in church-related schools, day camps, youth groups, private schools, licensed daycare centers, or similar experience; or [-]

(3) be a high school student 18 years of age or older; and

(4) have a final grade of 70 or better in two or more education and training courses specified in Chapter 130, Subchapter E, of this title (relating to Education and Training) for three or more credits verified in writing by the superintendent of the district where the credits were earned. The education and training courses must include either:

(A) Instructional Practices, as described in §130.164 of this title (relating to Instructional Practices (Two Credits), Adopted 2015); or

(B) Practicum in Education and Training, as described in §130.165 of this title (relating to Practicum in Education and Training (Two Credits), Adopted 2015).

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

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SUBCHAPTER G. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §230.104, §230.105

STATUTORY AUTHORITY. The amendments implement Texas Education Code (TEC), §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1)-(5), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and requires the SBEC to propose rules that include requirements for educators that hold a similar certification issued by another state or foreign country; TEC, §21.041(b)(9), which requires the SBEC to propose rules for the regulation of continuing education requirements; TEC, §21.041(c), which states that the SBEC may adopt fees for the issuance and maintenance of an educator certification to adequately cover the cost of the administration; TEC, §21.044(a), as amended by SBs 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.044(e), which states that in proposing rules under this section for a person to obtain a certificate to teach a health science technology education course, the board shall specify that a person must have: (1) an associate degree or more advanced degree from an accredited institution of higher education; (2) current licensure, certification, or registration as a health professions practitioner issued by a nationally recognized accrediting agency for health professionals; and (3) at least two years of wage-earning experience utilizing the licensure requirement; TEC, §21.044(f), which states that the SBEC may not propose rules for a certificate to teach a health science technology education course that specifies that a person must have a bachelor's degree or that establish any other credential or teaching experience requirements that exceed the requirements under Subsection (e); TEC, §21.048, as amended by HB 3, 86th Texas Legislature, 2019, which states that the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states the issuance requirements for certification to teach students with visual impairments; TEC, §21.0489, which specifies the issuance requirements for the Early Childhood: Prekindergarten-Grade 3 certi-

fication; TEC, §21.050(a), which states that a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), as amended by HB 3217, 86th Texas Legislature, 2019, which states that the SBEC shall provide for a minimum number of semester credit hours for field-based experience of internship; TEC, §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; TEC, §22.0831(c), which requires SBEC to review the national criminal history of a person seeking certification; TEC, §22.0831(f)(1) and (2), which state that SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements; and Texas Occupations Code, §53.105, which states that a licensing authority may require a fee that is in an amount sufficient to cover the cost of administration.

CROSS REFERENCE TO STATUTE. The amendments are proposed under Texas Education Code (TEC) §§21.031(a); 21.041(b)(1)-(5) and (9) and (c); 21.044(a), as amended by SBs 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017; (e), and (f); 21.048, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019; 21.0485; 21.0489; 21.050, as amended by House Bill (HB) 3217, 86th Texas Legislature, 2019; 21.054(a), as amended by SBs 7, 179, and 1839, 85th Texas Legislature, Regular Session, 2017, and HB 2424, 86th Texas Legislature, 2019; 22.082; and 22.0831(c) and (f); and Texas Occupations Code, §53.105.

§230.104. Correcting a Certificate or Permit Issued in Error:

(a) If a certificate or permit is issued with an incorrect grade level, subject area, or effective date, the recommending entity may request a correction of the certificate or permit by submitting a written request to Texas Education Agency (TEA) staff and a fee equivalent to the fee for the original certificate or permit. The entity must provide sufficient justification for the correction.

(b) The request to amend or correct an intern or probationary certificate and the appropriate fee must be submitted to the TEA no later than six weeks from the date of issuance of the certificate or, in the case of a change of assignment, no later than six weeks from the date of the change. Within seven days, the educator must notify the recommending educator preparation program of any change in assignment that may affect the certification category required by the assignment according to the provisions of Chapter 231 of this title (relating to Requirements for Public School Personnel Assignments).

§230.105. Issuance of Additional Certificates Based on Examination.

A teacher who holds a valid provisional, professional, or standard classroom teaching certificate or a valid temporary classroom teaching certificate issued under the provisions of Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States), or Chapter 245 of this title (relating to Certification of Educators from Other Countries), and a bachelor's degree or higher from an accredited institution of higher education may qualify for an additional teaching field or certification to teach at another level by passing the appropriate certification examination(s) for that subject.

The teacher must submit the application to add certification based on an examination during the time the certificate is allowed to be issued by the State Board for Educator Certification. The application for the additional certification must be submitted during the validity period of the appropriate Texas classroom teaching certificate. If a teacher holds multiple teaching certificates, all teaching certificates must be active before adding certification by examination. The rule shall not be used to qualify a classroom teacher for:

- (1) initial certification;
- (2) the Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate;
- (3) the Early Childhood: Prekindergarten-Grade 3 certificate;
- (4) [(3)] another class of certificate, as listed in Subchapter D of this chapter (relating to Types and Classes of Certificates Issued); or
- (5) [(4)] certification for which no certification examination has been developed.

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

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Cristina De La Fuente-Valadez
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State Board for Educator Certification
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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 133. LICENSING

SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.29

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes a new rule, 22 Texas Administrative Code (TAC), Chapter 133, Subchapter C, §133.29, regarding the Application for Temporary License for Military Spouses who are Licensed or Registered in Another State.

EXPLANATION OF AND JUSTIFICATION FOR THE PROPOSED RULES

The proposed rule implements Senate Bill (SB) 1200, 86th Legislature, Regular Session (2019), which amends Texas Occupations Code, Chapter 55, to authorize a military spouse to engage in a business or occupation for which a license is required, without obtaining the applicable license, if the military spouse is

currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the licensing requirements in Texas. SB 1200 also authorizes a licensing agency to issue a license to a military spouse who meets such requirements.

The proposed rule is necessary to establish a process for the Board to identify which jurisdictions have licensing or registration requirements that are substantially equivalent to the requirements in Texas and to verify that a military spouse is licensed or registered in good standing in one of such jurisdictions. The proposed rule also provides for the issuance of a license or registration to a military spouse who meets these qualifications and successfully passes a criminal history background check. The license or registration issued under this proposed rule would expire annually and may be renewed twice, but expires on the third anniversary of the date the Board provided confirmation to the military spouse.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Dr. Kinney has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that for each year of the first five years the proposed rule is in effect, there will be no impact on the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to provide consistency between state law and Board rules regarding licensing requirements; provide clear procedures for military spouses to become authorized to engage in professional engineering or land surveying; and permit military spouses to request a temporary license or registration, renewable for up to three years.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the confirmation of authority to practice and the license or registration established by the proposed rule can be obtained at no cost to military spouses who qualify under the proposed rule.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic

Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

This rule proposal is not subject to Texas Government Code §2001.0045 concerning increasing costs to regulated persons because this agency is a Self-Directed Semi-Independent (SDSI) agency and is exempt from that statute, but also because the proposed rule does not impose a cost on regulated persons under Government Code §2001.024, including another state agency, a special district, or a local government.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, the agency has determined the following:

1. The proposed rule does not create or eliminate a government program;
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency because the agency, which is a self-directed, semi-independent agency, receives no legislative appropriations;
4. The proposed rule does not require an increase or decrease in fees paid to the agency;
5. The proposed rule does create a new regulation, but the new regulation is required by SB 1200. Military spouses who hold a current license in another jurisdiction having licensing requirements that are substantially equivalent to the requirements for a similar license in Texas would now be authorized to engage in a business or occupation without obtaining the license required for such business or occupation. Such military spouses who also successfully pass a criminal history background check would also be eligible to receive a license or registration for the business or occupation;
6. The proposed rule does not expand, limit, or repeal an existing regulation;
7. The proposed rule may increase the number of individuals subject to the rule's applicability. This is a new rule, so the number of individuals previously subject to the rule's applicability is zero. After the rule is adopted, the number of individuals subject to the rule's applicability will be increased to the number of military spouses who hold current licenses in other jurisdictions having licensing requirements that are substantially equivalent to the requirements in Texas and who desire to engage in a regulated business or occupation in Texas; and
8. The proposed rule does not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rule and the proposed rule 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, the proposed rule does

not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Any comment or request for a public hearing must be submitted no later than 30 days after the publication of this notice to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers and Land Surveyors, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417, or sent by email to rules@pels.texas.gov.

STATUTORY AUTHORITY

The new rule is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rule or bylaw necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering and land surveying. The proposed rule is proposed in accordance with Texas Occupations Code §1001.301, which requires a license to practice engineering. The proposed rule is also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 53 and 1001, which establish the Board's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Board.

No other statutes, articles or codes are affected by the proposed new rule.

§133.29. Application for Temporary License for Military Spouses who are Licensed or Registered in Another State.

(a) In accordance with §55.0041, Occupations Code, a military spouse who is currently licensed in good standing by a jurisdiction with licensing requirements that are substantially equivalent to the licensing requirements in this state may be issued a temporary license.

(b) To be eligible for the confirmation described in Occupations Code §55.0041(b)(3), the military spouse shall provide the board:

(1) notice on a completed board-approved form, as required by Occupations Code §55.0041(b)(2) (relating to Application for Standard License) ;

(2) sufficient documentation to verify that the military spouse is currently licensed or registered in another jurisdiction and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license or registration;

(3) proof of the military spouse's residency in this state; and

(4) a copy of the military spouse's identification card.

(c) The board will determine whether the licensing or registration requirements of another jurisdiction are substantially equivalent to the licensing or registration requirements set forth by the board. In determining substantial equivalency, the board will consider factors including education, examinations, experience, and enforcement history.

(d) The board may not charge a fee for the license or registration as set forth in §133.21(d)(1)(B) of this title (relating to Application for Standard License).

(e) Authority to engage in engineering or land surveying.

(1) An individual who receives confirmation from the board, as described in Occupations Code §55.0041(b)(3):

(A) may engage in the practice of engineering or land surveying only for the period during which the individual meets the requirements of Occupations Code §55.0041(d); and

(B) must immediately notify the board if the individual no longer meets the requirements of Occupations Code §55.0041(d).

(2) An individual is not required to undergo a criminal history background check to be eligible for the authority granted under this subsection.

(f) Temporary license.

(1) An individual who receives confirmation from the board, as described in Occupations Code §55.0041(b)(3), is eligible to receive a temporary license to practice engineering or a registration to practice land surveying issued by the Board if the individual:

(A) submits a completed application on a board-approved form; and

(B) undergoes and successfully passes a criminal history background check.

(2) A license or registration issued under this subsection expires annually and may be renewed twice, but expires on the third anniversary of the date the board provided the confirmation described in Occupations Code §55.0041(b)(3) and may not be further renewed.

(g) An individual who engages in the practice of engineering or land surveying under the authority, license, or registration established by this section is subject to the enforcement authority granted under Occupations Code, Chapter 51, and the laws and regulations applicable to the practice of engineering and land surveying.

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 December 18, 2019.

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Lance Kinney, Ph.D., P.E.

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: February 2, 2020

For further information, please call: (512) 440-7723



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.7

The Texas State Board of Pharmacy proposes amendments to §281.7, concerning Grounds for Discipline for a Pharmacist License. The amendments, if adopted, will remove failing to repay a student loan as a ground for discipline of a pharmacist license, in accordance with Senate Bill 37.

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

five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the grounds for which a pharmacist may be disciplined. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

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

§281.7. Grounds for Discipline for a Pharmacist License.

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

- (1) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription;
- (2) dispensing a prescription drug order pursuant to a prescription from a practitioner as follows:
 - (A) the dispensing of a prescription drug order not issued for a legitimate medical purpose or in the usual course of professional practice shall include the following:

- (i) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature; or

- (ii) dispensing controlled substances or dangerous drugs when the pharmacist knows or reasonably should have known that the controlled substances or dangerous drugs are not necessary or required for the patient's valid medical needs or for a valid therapeutic purpose;

- (B) the provisions of subparagraph (A)(i) and (ii) of this paragraph are not applicable for prescriptions dispensed to persons with intractable pain in accordance with the requirements of the Intractable Pain Treatment Act, or to a narcotic drug dependent person in accordance with the requirements of Title 21, Code of Federal Regulations, §1306.07, and the Regulation of Narcotic Drug Treatment Programs Act;

- (3) delivering or offering to deliver a prescription drug or device in violation of this Act, the Controlled Substances Act, the Dangerous Drug Act, or rules promulgated pursuant to these Acts;

- (4) acquiring or possessing or attempting to acquire or possess prescription drugs in violation of this Act, the Controlled Substances Act, the Dangerous Drug Act, or rules adopted pursuant to these Acts;

- (5) distributing prescription drugs or devices to a practitioner or a pharmacy not in the course of professional practice or in violation of this Act, the Controlled Substances Act, Dangerous Drug Act, or rules adopted pursuant to these Acts;

- (6) refusing or failing to keep, maintain or furnish any record, notification or information required by this Act, the Controlled Substances Act, the Dangerous Drug Act, or rules adopted pursuant to these Acts;

- (7) refusing an entry into any pharmacy for any inspection authorized by the Act;

- (8) making false or fraudulent claims to third parties for reimbursement for pharmacy services;

- (9) operating a pharmacy in an unsanitary manner;
 - (10) making false or fraudulent claims concerning any drug;

- (11) persistently and flagrantly overcharging for the dispensing of controlled substances;

- (12) dispensing controlled substances or dangerous drugs in a manner not consistent with the public health or welfare;

- (13) failing to practice pharmacy in an acceptable manner consistent with the public health and welfare;

- (14) refilling a prescription upon which there is authorized "prn" refills or words of similar meaning, for a period of time in excess of one year from the date of issuance of such prescription;

- (15) engaging in any act, acting in concert with another, or engaging in any conspiracy resulting in a restraint of trade, coercion, or a monopoly in the practice of pharmacy;

- (16) sharing or offering to share with a practitioner compensation received from an individual provided pharmacy services by a pharmacist;

- (17) obstructing a board employee in the lawful performance of his or her duties of enforcing the Act;

(18) engaging in conduct that subverts or attempts to subvert any examination or examination process required for a license to practice pharmacy. Conduct that subverts or attempts to subvert the pharmacist licensing examination process includes, but is not limited to:

(A) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the board or questions contained in a question pool of any examination administered by the board;

(B) copying or attempting to copy another candidate's answers to any questions on any examination required for a license to practice pharmacy;

(C) obtaining or attempting to obtain confidential examination materials compiled by testing services or the board;

(D) impersonating or acting as a proxy for another in any examination required for a license to practice pharmacy;

(E) requesting or allowing another to impersonate or act as a proxy in any examination required for a license to practice pharmacy; or

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

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

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

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

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

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

- (A) a pharmacist-in-charge of a pharmacy;
- (B) a sole proprietor or individual owner of a pharmacy;
- (C) a partner in the ownership of a pharmacy; or

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

(24) failing to correct the issues identified in a warning notice by the specified time;

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

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

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

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

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

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

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

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

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

(A) sold for export use only;

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

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

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

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

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

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

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

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

(28) selling, purchasing, or trading, or offering to sell, purchase, or trade:

(A) misbranded prescription drugs; or

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

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

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

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

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

- (1) conduct which is willful, flagrant, and shameless, and which shows a moral indifference to standards of the community;
- (2) engaging in an act which is a felony;
- (3) engaging in an act that constitutes sexually deviant behavior; or
- (4) being required to register with the Department of Public Safety as a sex offender under Chapter 62, Code of Criminal Procedure.

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

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

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

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

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

Filed with the Office of the Secretary of State on December 18, 2019.

TRD-201904902

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

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: February 2, 2020

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



22 TAC §281.9

The Texas State Board of Pharmacy proposes amendments to §281.9, concerning Grounds for Discipline for a Pharmacy Technician or a Pharmacy Technician Trainee. The amendments, if adopted, remove failing to repay a student loan as a ground for discipline of a pharmacy technician or a pharmacy technician trainee registration, in accordance with Senate Bill 37.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period

the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the grounds for which a pharmacy technician or a pharmacy technician trainee registration may be disciplined. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

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

§281.9. *Grounds for Discipline for a Pharmacy Technician or a Pharmacy Technician Trainee.*

(a) Pharmacy technicians and pharmacy technician trainees shall be subject to all disciplinary grounds set forth in §568.003 of the Act.

(b) For the purposes of the Act, §568.003(a)(10), "negligent, unreasonable, or inappropriate conduct" shall include, but not be limited to:

- (1) delivering or offering to deliver a prescription drug or device in violation of this Act, the Controlled Substances Act, the Dangerous Drug Act, or rules promulgated pursuant to these Acts;

(2) acquiring or possessing or attempting to acquire or possess prescription drugs in violation of this Act, the Controlled Substances Act, or Dangerous Drug Act or rules adopted pursuant to these Acts;

(3) failing to perform the duties of a pharmacy technician or pharmacy technician trainee in an acceptable manner consistent with the public health and welfare, which contributes to a prescription not being dispensed or delivered accurately;

(4) obstructing a board employee in the lawful performance of his duties of enforcing the Act;

(5) violating the provisions of an agreed board order or board order, including accessing prescription drugs with a revoked or suspended pharmacy technician or pharmacy technician trainee registration;

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

~~{(7) failing to repay a guaranteed student loan, as provided in the Texas Education Code, §57.491; or}~~

~~(7) [(8)] failing to respond and to provide all requested records within the time specified in an audit of continuing education records under §297.8 of this title (relating to Continuing Education Requirements).~~

(c) For the purposes of the Act, §568.003(a)(2), the term "gross immorality" shall include, but not be limited to:

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

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

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

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

(d) For the purposes of the Act, §568.003(a)(3), the terms "fraud," "deceit," or "misrepresentation" shall apply to an individual seeking a registration as a pharmacy technician, as well as making an application to any entity that certifies or registers pharmacy technicians, and shall be defined as follows:

(1) "Fraud" means an intentional perversion of truth for the purpose of inducing the board in reliance upon it to issue a registration; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive the board.

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

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

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

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

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: February 2, 2020

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



SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.66

The Texas State Board of Pharmacy proposes amendments to §281.66, concerning Application for Reissuance or Removal of Restrictions of a License or Registration. The amendments, if adopted, remove arrests as an item the board may consider in determining the reinstatement of an applicant's previously revoked or canceled license or registration, in accordance with Senate Bill 1217.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the consideration of arrests in determining the reinstatement of an applicant's previously revoked or canceled license or registration. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

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

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

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

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

(6) The proposed amendments do limit an existing regulation in order to be consistent with state law;

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

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

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

§281.66. *Application for Reissuance or Removal of Restrictions of a License or Registration.*

(a) A person whose pharmacy license, pharmacy technician registration, or license or registration to practice pharmacy has been canceled, revoked, or restricted, whether voluntary or by action of the board, may, after 12 months from the effective date of such cancellation, revocation, or restriction, apply to the board for reinstatement or removal of the restriction of the license or registration.

(1) The application shall be given under oath and on the form prescribed by the board.

(2) A person applying for reinstatement or removal of restrictions may be required to meet all requirements necessary in order for the board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs.

(3) A person applying for reinstatement or removal of restrictions has the burden of proof.

(4) On investigation and hearing, the board may in its discretion grant or deny the application or it may modify its original finding to reflect any circumstances that have changed sufficiently to warrant the modification.

(5) If such application is denied by the board, a subsequent application may not be considered by the board until 12 months from the date of denial of the previous application.

(6) The board in its discretion may require a person to pass an examination or examinations to reenter the practice of pharmacy.

(7) The fee for reinstatement of a license or registration shall be \$100 which is to be paid to the Texas State Board of Pharmacy and includes the processing of the reinstatement application.

(b) In reinstatement cases not involving criminal offenses, the board may consider the following items in determining the reinstatement of an applicant's previously revoked or canceled license or registration:

- (1) moral character in the community;
- (2) employment history;
- (3) financial support to his/her family;
- (4) participation in continuing education programs or other methods of maintaining currency with the practice of pharmacy;
- (5) criminal history record[~~including arrests, indictments, and convictions relating to felonies or misdemeanors involving moral turpitude~~];
- (6) offers of employment in pharmacy;
- (7) involvement in public service activities in the community;
- (8) failure to comply with the provisions of the board order revoking or canceling the applicant's license or registration;

- (9) action by other state or federal regulatory agencies;
- (10) any physical, chemical, emotional, or mental impairment;
- (11) the gravity of the offense for which the applicant's license or registration was canceled, revoked, or restricted and the impact the offense had upon the public health, safety and welfare;
- (12) the length of time since the applicant's license or registration was canceled, revoked or restricted, as a factor in determining whether the time period has been sufficient for the applicant to have rehabilitated himself/herself to be able to practice pharmacy in a manner consistent with the public health, safety and welfare;
- (13) competency to engage in the practice of pharmacy; or
- (14) other rehabilitation actions taken by the applicant.

(c) If a reinstatement case involves criminal offenses, the sanctions specified in §281.64 of this chapter (relating to Sanctions for Criminal Offenses) apply.

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 December 18, 2019.

TRD-201904909

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

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: February 2, 2020

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



22 TAC §281.69

The Texas State Board of Pharmacy proposes new §281.69, concerning Automatic Denial or Revocation. The new rule, if adopted, provides for the automatic denial of a pharmacist licensure application or revocation of a pharmacist license for certain criminal offenses, in accordance with House Bill 1899.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to provide consistency between state law and Board rules regarding the automatic denial of a pharmacist licensure application or revocation of a pharmacist license for certain criminal offenses. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

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

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

(5) The proposed rule does create a new regulation in order to be consistent with state law;

(6) The proposed rule does not limit or expand an existing regulation because it creates a new regulation;

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

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

The statutes affected by the proposed rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.69. Automatic Denial or Revocation.

(a) Notwithstanding subsection (c) of this section, as required in Texas Occupations Code, §§108.052 and 108.053, the board shall deny an application for licensure as a pharmacist by or immediately upon receiving notification as specified in §108.053(b) revoke the pharmacist license of a person who:

(1) is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(2) has been previously convicted of or placed on deferred adjudication community supervision for the commission of a felony offense involving the use or threat of force; or

(3) has been previously convicted of or placed on deferred adjudication community supervision for the commission of an offense:

(A) under Penal Code, §§22.011, 22.02, 22.021, or 22.04, or an offense under the laws of another state or federal law that is equivalent to an offense under one of those sections;

(B) committed:

(i) when the applicant held a license as a health care professional in this state or another state;

(ii) in the course of providing services within the scope of the applicant's license; and

(4) in which the victim of the offense was a patient of the applicant.

(b) As specified in Texas Occupations Code, §108.054, a person whose license application is denied under this subsection:

(1) based on a conviction or placement on deferred adjudication community supervision for an offense described by subsections (f)(1)(B) or (C) of this section may reapply for a license if the con-

viction or deferred adjudication is reversed, set aside, or vacated on appeal; or

(2) based on a requirement to register as a sex offender under Chapter 62, Code of Criminal Procedure, may reapply for a license after the expiration of the period for which the person is required to register.

(c) As specified in Texas Occupations Code, §108.055, a person whose license is revoked under this subsection:

(1) based on a conviction or placement on deferred adjudication community supervision for an offense described by subsections (f)(1)(B) or (C) of this section may apply for reinstatement of the license if the conviction or deferred adjudication is reversed, set aside, or vacated on appeal; or

(2) based on a requirement to register as a sex offender under Chapter 62, Code of Criminal Procedure, may apply for reinstatement of the license after the expiration of the period for which the person is required to register.

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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TRD-201904911

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

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: February 2, 2020

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



22 TAC §281.70

The Texas State Board of Pharmacy proposes a new rule §281.70, concerning Surety Bond. The new rule, if adopted, specifies that the board may require a surety bond if an investigation of a pharmacy involves section 565.002(a)(7) or (10) of the Pharmacy Act, in accordance with House Bill 3496.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to provide consistency between state law and Board rules regarding the board's authority to require a surety bond from a pharmacy under investigation for certain issues. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

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

- (3) Implementation of the proposed rule does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) The proposed rule does create a new regulation in order to be consistent with state law;
- (6) The proposed rule does not limit or expand an existing regulation;
- (7) The proposed rule does increase the number of individuals subject to the rule's applicability; and
- (8) The proposed rule does not positively or adversely affect this state's economy.

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

The statutes affected by the proposed rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§281.70. Surety Bond.

The Board may require a surety bond if an investigation of a pharmacy involves §565.002(a)(7) or (10) of the Act.

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 December 18, 2019.

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 Allison Vordenbaumen Benz, R.Ph., M.S.
 Executive Director
 Texas State Board of Pharmacy
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 For further information, please call: (512) 305-8010



CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1

The Texas State Board of Pharmacy proposes amendments to §291.1, concerning Pharmacy License Application. The amendments, if adopted, clarify that an applicant for a pharmacy license must submit a sworn disclosure statement, in accordance with House Bill 3496, and correct a grammatical error.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period

the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide clearer regulatory language and grammatically correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

- (1) The proposed amendments do not create or eliminate a government program;
- (2) Implementation of the proposed amendments does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) Implementation of the proposed amendments does not require an increase or decrease in the future legislative appropriations to the agency;
- (4) The proposed amendments do not require an increase or decrease in fees paid to the agency;
- (5) The proposed amendments do not create a new regulation;
- (6) The proposed amendments do expand an existing regulation by clarifying that an applicant for a pharmacy license must submit a sworn disclosure statement.
- (7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) The proposed amendments do not positively or adversely affect this state's economy.

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas, 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

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

§291.1. Pharmacy License Application.

(a) To qualify for a pharmacy license, the applicant must submit an application which includes any information requested on the application and, as required by §560.052(b) of the Act, a sworn disclosure statement as specified in §291.4 of this title (relating to Sworn Disclosure Statement).

(b) The applicant may be required to meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and being responsible for all associated costs. The criminal history information may be required for each individual owner, or if the pharmacy is owned

by a partnership or a closely held corporation for each managing officer.

(c) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance of a pharmacy license.

(d) For the purposes [purpose] of this section, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(e) Prior to the issuance of a license for a pharmacy located in Texas, the board shall conduct an on-site inspection of the pharmacy in the presence of the pharmacist-in-charge and owner or representative of the owner, to ensure that the pharmacist-in-charge and owner can meet the requirements of the Texas Pharmacy Act and Board Rules.

(f) If the applicant holds an active pharmacy license in Texas on the date of application for a new pharmacy license or for other good cause shown as specified by the board, the board may waive the pre-inspection as set forth in subsection (e) of this section.

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

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

Executive Director

Texas State Board of Pharmacy

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



22 TAC §291.3

The Texas State Board of Pharmacy proposes amendments to §291.3, concerning Required Notifications. The amendments, if adopted, clarify that notification to the Board of a change of managing officer or application for change of ownership shall include an updated sworn disclosure statement, in accordance with House Bill 3496, and correct grammatical errors.

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

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

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

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

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

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

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

(6) The proposed amendments do expand an existing regulation by clarifying that notification to the Board of a change in managing officer must include an updated sworn disclosure statement;

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

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

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

§291.3. Required Notifications.

(a) Change of Location.

(1) When a pharmacy changes location, the following is applicable:

(A) A new completed pharmacy application containing the information outlined in §291.1 of this title (relating to Pharmacy License Application)[5] must be filed with the board not later than 30 days before the date of the change of location of the pharmacy.[6]

(B) The previously issued license must be returned to the board office.[7]

(C) An amended license reflecting the new location of the pharmacy will be issued by the board; and

(D) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance of the amended license.

(2) At least 14 days prior to the change of location of a pharmacy that dispenses prescription drug orders, the pharmacist-in-charge shall post a sign in a conspicuous place indicating that the pharmacy is changing locations. Such sign shall be in the front of the prescription department and at all public entrance doors to the pharmacy and shall indicate the date the pharmacy is changing locations.

(3) Disasters, accidents, and emergencies which require the pharmacy to change location shall be immediately reported to the board. If a pharmacy changes location suddenly due to disasters, accidents, or other emergency circumstances and the pharmacist-in-charge cannot provide notification 14 days prior to the change of location, the

pharmacist-in-charge shall comply with the provisions of paragraph (2) of this subsection as far in advance of the change of location as allowed by the circumstances.

(4) When a Class A-S, C-S, or E-S pharmacy changes location, the pharmacy's classification will revert to a Class A, Class C, or Class E unless or until the board [Board] or its designee has inspected the new location to ensure the pharmacy meets the requirements as specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(5) When a Class B pharmacy changes location, the board [Board] shall inspect the pharmacy at the new location to ensure the pharmacy meets the requirements as specified in subchapter C of this title (relating to Nuclear Pharmacy (Class B)) prior to the pharmacy becoming operational.

(b) Change of Name. When a pharmacy changes its name, the following is applicable:[-]

(1) A new completed pharmacy application containing the information outlined in §291.1 of this title (relating to Pharmacy License Application)[-] must be filed with the board within 10 days of the change of name of the pharmacy;[-]

(2) The previously issued license must be returned to the board office;[-]

(3) An amended license reflecting the new name of the pharmacy will be issued by the board; and

(4) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for issuance of the amended license.

(c) Change of Managing Officers.

(1) The owner of a pharmacy shall notify the board in writing within 10 days of a change of any managing officer of a partnership or corporation which owns a pharmacy. The written notification shall include the effective date of such change, an updated sworn disclosure statement as required by §560.052(b) of the Act and as specified in §291.4 of this title (relating to Sworn Disclosure Statement), and the following information for all managing officers:

(A) name and title;

(B) home address and telephone number;

(C) date of birth;

(D) a copy of social security card or other official document showing the social security number as approved by the board; and

(E) a copy of current driver's license, state issued photo identification card, or passport.

(2) For purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of pharmacy operations, who are designated by the partnership or corporation to be jointly responsible for the legal operation of the pharmacy.

(d) Change of Ownership.

(1) When a pharmacy changes ownership, a new pharmacy application must be filed with the board following the procedures as specified in §291.1 of this title (relating to Pharmacy License Application), including, as required by §560.052(b) of the Act, the submission of a sworn disclosure statement as specified in §291.4 of this title (relating to Sworn Disclosure Statement). In addition, a copy of the pur-

chase contract or mutual agreement between the buyer and seller must be submitted.

(2) The license issued to the previous owner must be returned to the board.

(3) A fee as specified in §291.6 of this title will be charged for issuance of a new license.

(e) Change of Pharmacist Employment.

(1) Change of pharmacist employed in a pharmacy. When a change in pharmacist employment occurs, the pharmacist shall report such change in writing to the board within 10 days.

(2) Change of pharmacist-in-charge of a pharmacy. The incoming pharmacist-in-charge shall be responsible for notifying the board within 10 days in writing on a form provided by the board that a change of pharmacist-in-charge has occurred. The notification shall include the following:

(A) the name and license number of the departing pharmacist-in-charge;

(B) the name and license number of the incoming pharmacist-in-charge;

(C) the date the incoming pharmacist-in-charge became the pharmacist-in-charge; and

(D) a statement signed by the incoming pharmacist-in-charge attesting that:

(i) an inventory, as specified in §291.17 of this title (relating to Inventory Requirements), has been conducted by the departing and incoming pharmacists-in-charge; if the inventory was not taken by both pharmacists, the statement shall provide an explanation; and

(ii) the incoming pharmacist-in-charge has read and understands the laws and rules relating to this class of pharmacy.

(f) Notification of Theft or Loss of a Controlled Substance or a Dangerous Drug.

(1) Controlled substances. For the purposes of the Act, §562.106, the theft or significant loss of any controlled substance by a pharmacy shall be reported in writing to the board immediately on discovery of such theft or loss. A pharmacy shall be in compliance with this subsection by submitting to the board a copy of the Drug Enforcement Administration (DEA) report of theft or loss of controlled substances, DEA Form 106, or by submitting a list of all controlled substances stolen or lost.

(2) Dangerous drugs. A pharmacy shall report in writing to the board immediately on discovery the theft or significant loss of any dangerous drug by submitting a list of the name and quantity of all dangerous drugs stolen or lost.

(g) Fire or Other Disaster. If a pharmacy experiences a fire or other disaster, the following requirements are applicable.

(1) Responsibilities of the pharmacist-in-charge.

(A) The pharmacist-in-charge shall be responsible for reporting the date of the fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or the treatment of [the] injury, illness, and disease; such notification shall be reported to the board, within 10 days from the date of the disaster.

(B) The pharmacist-in-charge or designated agent shall comply with the following procedures.

(i) If controlled substances, dangerous drugs, or Drug Enforcement Administration (DEA) order forms are lost or destroyed in the disaster, the pharmacy shall:

(I) notify the DEA and the board of the loss of the controlled substances or order forms immediately upon discovery; and

(II) notify the board in writing of the loss of the dangerous drugs by submitting a list of the dangerous drugs lost.

(ii) If the extent of the loss of controlled substances or dangerous drugs is not able to be determined, the pharmacy shall:

(I) take a new, complete inventory of all remaining drugs specified in §291.17(c) of this title (relating to Inventory Requirements);

(II) submit to the DEA a statement attesting that the loss of controlled substances is indeterminable and that a new, complete inventory of all remaining controlled substances was conducted and state the date of such inventory; and

(III) submit to the board a statement attesting that the loss of controlled substances and dangerous drugs is indeterminable and that a new, complete inventory of the drugs specified in §291.17(c) of this title was conducted and state the date of such inventory.

(C) If the pharmacy changes to a new, permanent location, the pharmacist-in-charge shall comply with subsection (a) of this section.

(D) If the pharmacy moves to a temporary location, the pharmacist shall comply with subsection (a) of this section. If the pharmacy returns to the original location, the pharmacist-in-charge shall again comply with subsection (a) of this section.

(E) If the pharmacy closes due to fire or other disaster, the pharmacy may not be closed for longer than 90 days as specified in §291.11 of this title (relating to Operation of a Pharmacy).

(F) If the pharmacy discontinues business (ceases to operate as a pharmacy), the pharmacist-in-charge shall comply with §291.5 of this title (relating to Closing a Pharmacy).

(G) The pharmacist-in-charge shall maintain copies of all inventories, reports, or notifications required by this section for a period of two years.

(2) Drug stock.

(A) Any drug which has been exposed to excessive heat, smoke, or other conditions which may have caused deterioration shall not be dispensed.

(B) Any potentially adulterated or damaged drug shall only be sold, transferred, or otherwise distributed pursuant to the provisions of the Texas Food Drug and Cosmetics Act (Chapter 431, Health and Safety Code) administered by the Bureau of Food and Drug Safety of the Texas Department of State Health Services.

(h) Notification to Consumers.

(1) Pharmacy.

(A) Every licensed pharmacy shall provide notification to consumers of the name, mailing address, Internet site address, and telephone number of the board for the purpose of directing complaints concerning the practice of pharmacy to the board. Such notification shall be provided as follows.

(i) If the pharmacy serves walk-in customers, the pharmacy shall either:

(I) post in a prominent place that is in clear public view where prescription drugs are dispensed:

(-a-) a sign which notifies the consumer that complaints concerning the practice of pharmacy may be filed with the board and list the board's name, mailing address, Internet site address, telephone number, and a toll-free telephone number for filing complaints; or

(-b-) an electronic messaging system in a type size no smaller than ten-point Times Roman which notifies the consumer that complaints concerning the practice of pharmacy may be filed with the board and list the board's name, mailing address, Internet site address, telephone number, and a toll-free number for filing complaints; or

(II) provide with each dispensed prescription a written notification in a type size no smaller than ten-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, Internet site address, telephone number of the board, and a toll-free telephone number for filing complaints)."

(ii) If the prescription drug order is delivered to patients at their residence or other designated location, the pharmacy shall provide with each dispensed prescription a written notification in type size no smaller than ten-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, Internet site address, telephone number, and a toll-free telephone number for filing complaints)." If multiple prescriptions are delivered to the same location, only one such notice shall be required.

(iii) The provisions of this subsection do not apply to prescriptions for patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(B) A pharmacy that maintains a generally accessible site on the Internet that is located in Texas or sells or distributes drugs through this site to residents of this state shall post the following information on the pharmacy's initial home page and on the page where a sale of prescription drugs occurs.

(i) Information on the ownership of the pharmacy, to include at a minimum, the:

(I) owner's name or if the owner is a partnership or corporation, the partnership's or corporation's name and the name of the chief operating officer;

(II) owner's address;

(III) owner's telephone number; and

(IV) year the owner began operating pharmacies in the United States.

(ii) The Internet address and toll free telephone number that a consumer may use to:

(I) report medication/device problems to the pharmacy; and

(II) report business compliance problems.

(iii) Information about each pharmacy that dispenses prescriptions for this site, to include at a minimum, the:

(I) pharmacy's name, address, and telephone number;

(II) name of the pharmacist responsible for operation of the pharmacy;

(III) Texas pharmacy license number for the pharmacy and a link to the Internet site maintained by the Texas State Board of Pharmacy; and

(IV) the names of all other states in which the pharmacy is licensed, the license number in that state, and a link to the Internet site of the entity that regulates pharmacies in that state, if available.

(C) A pharmacy whose Internet site has been verified by the National Association of Boards of Pharmacy to be in compliance with the laws of this state, as well as in all other states in which the pharmacy is licensed shall be in compliance with subparagraph (B) of this paragraph.

(2) Texas State Board of Pharmacy. On or before January 1, 2005, the board shall establish a pharmacy profile system as specified in §2054.2606, Government Code.

(A) The board shall make the pharmacy profiles available to the public on the agency's Internet site.

(B) A pharmacy profile shall contain at least the following information:

(i) name, address, and telephone number of the pharmacy;

(ii) pharmacy license number, licensure status, and expiration date of the license;

(iii) the class and type of the pharmacy;

(iv) ownership information for the pharmacy;

(v) names and license numbers of all pharmacists working at the pharmacy;

(vi) whether the pharmacy has had prior disciplinary action by the board;

(vii) whether the pharmacy's consumer service areas are accessible to disabled persons, as defined by law;

(viii) the type of language translating services, including translating services for persons with impairment of hearing, that the pharmacy provides for consumers; and

(ix) insurance information including whether the pharmacy participates in the state Medicaid program.

(C) The board shall gather this information on initial licensing and update the information in conjunction with the license renewal for the pharmacy.

(i) Notification of Licensees or Registrants Obtaining Controlled Substances or Dangerous Drugs by Forged Prescriptions. If a licensee or registrant obtains controlled substances or dangerous drugs from a pharmacy by means of a forged prescription, the pharmacy shall report in writing to the board immediately on discovery of such forgery. A pharmacy shall be in compliance with this subsection by submitting to the board the following:

(1) name of licensee or registrant obtaining controlled substances or dangerous drugs by forged prescription;

(2) date(s) of forged prescription(s);

(3) name(s) and amount(s) of drug(s); and

(4) copies of forged prescriptions.

(j) Notification of Disciplinary Action. For the purpose of the Act, §562.106, a pharmacy shall report in writing to the board not later than the 10th day after the date of:

(1) a final order against the pharmacy license holder by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is located in another state; or

(2) a final order against a pharmacist who is designated as the pharmacist-in-charge of the pharmacy by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is located in another state.

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

Filed with the Office of the Secretary of State on December 18, 2019.

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

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: February 2, 2020

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



22 TAC §291.4

The Texas State Board of Pharmacy proposes a new §291.4, concerning Sworn Disclosure Statement. The new rule, if adopted, creates a requirement for a pharmacy license applicant to submit a sworn disclosure statement, in accordance with House Bill 3496.

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

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

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

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

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

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

(5) The proposed rule does create a new regulation in order to be consistent with state law;

(6) The proposed rule does not limit or expand an existing regulation;

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

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

The statutes affected by the proposed rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§291.4. Sworn Disclosure Statement.

(a) The following words and terms, when used in this section, shall have the following meanings:

(1) Publicly traded company--a company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78I) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)).

(2) Retail grocery store chain--ten or more stores under the same ownership which primarily sell produce, food, and beverage products that are intended for off premises consumption.

(b) To qualify for a pharmacy license, a sworn disclosure statement form must be submitted to the board, unless:

(1) the pharmacy for which the application is made is operated by a publicly traded company;

(2) the pharmacy for which the application is made is wholly owned by a retail grocery store chain; or

(3) the applicant is applying for a Class B or Class C pharmacy license.

(c) The sworn disclosure statement form must be notarized and must include any information requested on the form, including:

(1) the name of the pharmacy;

(2) the name of each person who has a direct financial investment in the pharmacy;

(3) the name of each person who:

(A) is not an individual;

(B) has any financial investment in the pharmacy; and

(C) is not otherwise disclosed under paragraph (2) of this subsection;

(4) the total amount or percentage of the financial investment made by each person described by paragraph (2) of this subsection; and

(5) the name of each of the following persons, if applicable, connected to the pharmacy if the person is not otherwise disclosed under paragraph (2) or (3) of this subsection:

(A) a partner;

(B) an officer;

(C) a director;

(D) a managing employee;

(E) an owner or person who controls the owner; and

(F) a person who acts as a controlling person of the pharmacy through the exercise of direct or indirect influence or control over the management of the pharmacy, the expenditure of money by the pharmacy, or a policy of the pharmacy, including:

(i) a management company, landlord, marketing company, or similar person who operates or contracts for the operation of a pharmacy and, if the pharmacy is a publicly traded corporation or is controlled by a publicly traded corporation, an officer or director of the corporation but not a shareholder or lender of the corporation;

(ii) an individual who has a personal, familial, or other relationship with an owner, manager, landlord, tenant, or provider of a pharmacy that allows the individual to exercise actual control of the pharmacy; and

(iii) any other person the board by rule requires to be included based on the person's exercise of direct or indirect influence or control.

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



22 TAC §291.14

The Texas State Board of Pharmacy proposes amendments to §291.14, concerning Pharmacy License Renewal. The amendments, if adopted, add a requirement to submit a sworn disclosure statement, in accordance with House Bill 3496, and correct a grammatical error.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the requirement to submit a sworn disclosure statement with a pharmacy license application and grammatically correct regulations. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

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

§291.14. Pharmacy License Renewal.

(a) Renewal requirements.

- (1) A license to operate a pharmacy expires on the last day of the assigned expiration month.
- (2) The provision of the Act, §561.005, shall apply if the completed application and a renewal fee is not received in the board's office on or before the last day of the assigned expiration month.
- (3) An expired license may be renewed according to the following schedule:
 - (A) If the license has been expired for 90 days or less, the license may be renewed by paying to the board a renewal fee that is equal to one and one-half times the required renewal fee as specified in §291.6 of this title (relating to Pharmacy License Fees).
 - (B) If the license has been expired for 91 days or more, the license may not be renewed. The pharmacy may apply for a new license as specified in §291.1 of this title (relating to Pharmacy License Application), including, as required by §560.052(b) of the Act, the submission of a sworn disclosure statement as specified in §291.4 of this title (relating to Sworn Disclosure Statement).
- (b) If the board determines on inspection at the pharmacy's address on or after the expiration date of the license that no pharmacy is located or exists at the pharmacy's address (e.g., the building is vacated or for sale or lease, or another business is operating at the location), the board shall not renew the license.

(c) Additional renewal requirements for Class E pharmacies. In addition to the renewal requirements in subsection (a) of this section, a Class E pharmacy shall have on file with the board [Board] an inspection report issued:

- (1) not more than three years before the date the renewal application is received; and
- (2) by the pharmacy licensing board in the state of the pharmacy's physical location except as provided in §291.104 of this title (relating to Operational Standards).

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

Filed with the Office of the Secretary of State on December 18, 2019.

TRD-201904913

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

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: February 2, 2020

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



SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.34

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

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

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

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

(6) The proposed amendments do limit an existing regulation by removing an outdated reference;

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

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

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

§291.34. *Records.*

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of Subchapter B of this chapter (relating to Community Pharmacy (Class A)) shall be:

(A) kept by the pharmacy at the pharmacy's licensed location and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedule II shall be maintained separately from all other records of the pharmacy.

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

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

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

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

(b) Prescriptions.

(1) Professional responsibility.

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

(B) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug unless the pharmacist complies with the requirements of §562.056 and §562.112 of the Act, and §291.29 of this title (relating to Professional Responsibility of Pharmacists).

(C) Subparagraph (B) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g., a practitioner taking calls for the patient's regular practitioner).

(D) The owner of a Class A pharmacy shall have responsibility for ensuring its agents and employees engage in appropriate decisions regarding dispensing of valid prescriptions as set forth in §562.112 of the Act.

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Dangerous drug prescription orders. Written prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system that electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) that security features of the system require the practitioner to authorize each use; and

(-b-) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner. (For example, the paper contains security provisions against copying that results in some indication on the copy that it is a copy and therefore render the prescription null and void.)

(ii) Controlled substance prescription orders. Prescription drug orders for Schedules II, III, IV, or V controlled substances shall be manually signed by the practitioner. Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(iii) Other provisions for a practitioner's signature.

(I) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g., J.H. Smith or John H. Smith.

(II) Rubber stamped signatures may not be used.

(III) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

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

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug orders for Schedule II controlled substances issued by a practitioner in another state provided:

(-a-) the prescription is dispensed as specified in §315.9 of this title (relating to Pharmacy Responsibility - Out-of-State Practitioner - Effective September 1, 2016);

(-b-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-c-) the prescription drug order is not dispensed after the end of the twenty-first day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedules III, IV, or V issued by a physician, dentist, veterinarian, or podiatrist in another state provided:

(-a-) the prescription drug order is issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal DEA registration number, and who may legally prescribe Schedules III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, a new prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(C) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

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

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(D) Prescription drug orders issued by an advanced practice registered nurse, physician assistant, or pharmacist.

(i) A pharmacist may dispense a prescription drug order that is:

(I) issued by an advanced practice registered nurse or physician assistant provided the advanced practice registered nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code; and

(II) for a dangerous drug and signed by a pharmacist under delegated authority of a physician as specified in Subtitle B, Chapter 157, Occupations Code.

(ii) Each practitioner shall designate in writing the name of each advanced practice registered nurse or physician assistant authorized to issue a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice registered nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice registered nurse or physician assistant.

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

(3) Verbal prescription drug orders.

(A) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

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

(C) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(4) Electronic prescription drug orders.

(A) Dangerous drug prescription orders.

(i) An electronic prescription drug order for a dangerous drug may be transmitted by a practitioner or a practitioner's designated agent:

(I) directly to a pharmacy; or

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

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

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

(ii) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a

copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(B) Controlled substance prescription orders. A pharmacist may only dispense an electronic prescription drug order for a Schedule II, III, IV, or V controlled substance in compliance with [the] federal and state laws and the rules of the Drug Enforcement Administration outlined in Part 1300 of the Code of Federal Regulations [and Texas Department of Public Safety].

(C) Prescriptions issued by a practitioner licensed in the Dominion of Canada or the United Mexican States. A pharmacist may not dispense an electronic prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Facsimile (faxed) prescription drug orders.

(A) A pharmacist may dispense a prescription drug order for a dangerous drug transmitted to the pharmacy by facsimile.

(B) A pharmacist may dispense a prescription drug order for a Schedule III-V controlled substance transmitted to the pharmacy by facsimile provided the prescription is manually signed by the practitioner and not electronically signed using a system that electronically replicates the practitioner's manual signature on the prescription drug order.

(C) A pharmacist may not dispense a facsimile prescription drug order for a dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(6) Original prescription drug order records.

(A) Original prescriptions may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order, including clarifications to the order given to the pharmacist by the practitioner or the practitioner's agent and recorded on the prescription.

(B) Notwithstanding subparagraph (A) of this paragraph, a pharmacist may dispense a quantity less than indicated on the original prescription drug order at the request of the patient or patient's agent.

(C) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(D) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required. However, an original prescription drug order for a dangerous drug may be changed in accordance with paragraph (10) of this subsection relating to accelerated refills.

(E) Original prescriptions shall be maintained in three separate files as follows:

- (i) prescriptions for controlled substances listed in Schedule II;
- (ii) prescriptions for controlled substances listed in Schedules III-V; and
- (iii) prescriptions for dangerous drugs and nonprescription drugs.

(F) Original prescription records other than prescriptions for Schedule II controlled substances may be stored in a system that is capable of producing a direct image of the original prescription record, e.g., a digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (D) of this paragraph; and

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

(7) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) the name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) the address of the patient;[5] provided, however, that a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) the name, address and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped, and if for a controlled substance, the DEA registration number of the practitioner;

(iv) the name and strength of the drug prescribed;

(v) the quantity prescribed numerically, and if for a controlled substance:

(I) numerically, followed by the number written as a word, if the prescription is written;

(II) numerically, if the prescription is electronic;

or

(III) if the prescription is communicated orally or telephonically, as transcribed by the receiving pharmacist;

(vi) directions for use;

(vii) the intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) the date of issuance;

(ix) if a faxed prescription:

(I) a statement that indicates that the prescription has been faxed (e.g., Faxed to); and

(II) if transmitted by a designated agent, the name of the designated agent;

(x) if electronically transmitted:

(I) the date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(II) if transmitted by a designated agent, the name of the designated agent; and

(xi) if issued by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code:

(I) the name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner; and

(II) the address and telephone number of the clinic where the prescription drug order was carried out or signed; and

(xii) if communicated orally or telephonically:

(I) the initials or identification code of the transcribing pharmacist; and

(II) the name of the prescriber or prescriber's agent communicating the prescription information.

(B) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hardcopy prescription or in the pharmacy's data processing system:

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

(ii) the initials or identification code of the dispensing pharmacist;

(iii) the initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) the quantity dispensed, if different from the quantity prescribed;

(v) the date of dispensing, if different from the date of issuance; and

(vi) the brand name or manufacturer of the drug or biological product actually dispensed, if the drug was prescribed by generic name or interchangeable biological name or if a drug or interchangeable biological product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(C) Prescription drug orders may be utilized as authorized in Title 40, Part 1, Chapter 19 of the Texas Administrative Code.

(i) A prescription drug order is not required to bear the information specified in subparagraph (A) of this paragraph if the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital). Such prescription drug orders must contain the following information:

(I) the full name of the patient;

(II) the date of issuance;

(III) the name, strength, and dosage form of the drug prescribed;

(IV) directions for use; and

(V) the signature(s) required by 40 TAC §19.1506.

(ii) Prescription drug orders for dangerous drugs shall not be dispensed following one year after the date of issuance unless the authorized prescriber renews the prescription drug order.

(iii) Controlled substances shall not be dispensed pursuant to a prescription drug order under this subparagraph.

(8) Refills.

(A) General information.

(i) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order except as authorized in paragraph (10) of this subsection relating to accelerated refills.

(ii) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills and documented as specified in subsection (1) of this section.

(B) Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(C) Refills of prescription drug orders for Schedules III-V controlled substances.

(i) Prescription drug orders for Schedules III-V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(D) Pharmacist unable to contact prescribing practitioner. If a pharmacist is unable to contact the prescribing practitioner after a reasonable effort, a pharmacist may exercise his or her [his] professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iii) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(iv) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(v) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vi) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(vii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his or her [his] professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his or her [his] professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (vi) of this subparagraph.

(E) Natural or manmade disasters. If a natural or manmade disaster has occurred that prohibits the pharmacist from being able to contact the practitioner, a pharmacist may exercise his or her [his] professional judgment in refilling a prescription drug order for a drug, other than a Schedule II controlled substance, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) the quantity of prescription drug dispensed does not exceed a 30-day supply;

(iii) the governor has declared a state of disaster;

(iv) the board, through the executive director, has notified pharmacies that pharmacists may dispense up to a 30-day supply of prescription drugs;

(v) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(vi) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vii) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(viii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(ix) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his or her [his] professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy that contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his or her [his] professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clause (i) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (ii) - (viii) of this subparagraph.

(F) Auto-Refill Programs. A pharmacy may use a program that automatically refills prescriptions that have existing refills available in order to improve patient compliance with and adherence

to prescribed medication therapy. The following is applicable in order to enroll patients into an auto-refill program.

(i) Notice of the availability of an auto-refill program shall be given to the patient or patient's agent, and the patient or patient's agent must affirmatively indicate that they wish to enroll in such a program and the pharmacy shall document such indication.

(ii) The patient or patient's agent shall have the option to withdraw from such a program at any time.

(iii) Auto-refill programs may be used for refills of dangerous drugs, and Schedules IV and V controlled substances. Schedules II and III controlled substances may not be dispensed by an auto-refill program.

(iv) As is required for all prescriptions, a drug regimen review shall be completed on all prescriptions filled as a result of the auto-refill program. Special attention shall be noted for drug regimen review warnings of duplication of therapy and all such conflicts shall be resolved with the prescribing practitioner prior to refilling the prescription.

(9) Records Relating to Dispensing Errors. If a dispensing error occurs, the following is applicable.

(A) Original prescription drug orders:

(i) shall not be destroyed and must be maintained in accordance with subsection (a) of this section; and

(ii) shall not be altered. Altering includes placing a label or any other item over any of the information on the prescription drug order (e.g., a dispensing tag or label that is affixed to back of a prescription drug order must not be affixed on top of another dispensing tag or label in such a manner as to obliterate the information relating to the error).

(B) Prescription drug order records maintained in a data processing system:

(i) shall not be deleted and must be maintained in accordance with subsection (a) of this section;

(ii) may be changed only in compliance with subsection (e)(2)(B) of this section; and

(iii) if the error involved incorrect data entry into the pharmacy's data processing system, this record must be either voided or cancelled in the data processing system, so that the incorrectly entered prescription drug order may not be dispensed, or the data processing system must be capable of maintaining an audit trail showing any changes made to the data in the system.

(10) Accelerated refills. In accordance with §562.0545 of the Act, a pharmacist may dispense up to a 90-day supply of a dangerous drug pursuant to a valid prescription that specifies the dispensing of a lesser amount followed by periodic refills of that amount if:

(A) the total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the original prescription, including refills;

(B) the patient consents to the dispensing of up to a 90-day supply and the physician has been notified electronically or by telephone;

(C) the physician has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary;

(D) the dangerous drug is not a psychotropic drug used to treat mental or psychiatric conditions; and

(E) the patient is at least 18 years of age.

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months that is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug regimen review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such lists shall contain the following information:

(i) date dispensed;

(ii) name, strength, and quantity of the drug dispensed;

(iii) prescribing practitioner's name;

(iv) unique identification number of the prescription; and

(v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained online [~~on-line~~]. A patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) Nothing in this subsection shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, that indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III-V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill as specified in subsection (l) of this section.

(4) Each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual record keeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(6)(D) of this section.

(C) Requirements for backup systems.

(i) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a reg-

ular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system that can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(H) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout that contains the same information required on the daily printout as specified in paragraph (2)(C) of this subsection. The information on this hard copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout that contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(2) Records of dispensing.

(A) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(B) Each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hard copy prescription.

(C) The data processing system shall have the capacity to produce a daily hard copy printout of all original prescriptions dispensed and refilled. This hard copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name^[§] and the supervising physician's name if the prescription was issued by an advanced practice registered nurse, physician assistant or pharmacist;

(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via computer display, the following shall also be included on the hard copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) any changes made to a record of dispensing.

(D) The daily hard copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of non-controlled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard copy printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard copy printout shall be available within 72 hours with a certification by the individual providing the printout, stating [that states] that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) The pharmacist-in-charge is responsible for the proper maintenance of such records, for ensuring [and responsible] that such data processing system can produce the records outlined in this section, and that such system is in compliance with this subsection.

(H) The data processing system shall be capable of producing a hard copy printout of an audit trail for all dispensing [dispensings] (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in subparagraph (C) of this paragraph.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

(I) Failure to provide the records set out in this subsection, either on site or within 72 hours constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(J) The data processing system shall provide online [~~on-line~~] retrieval (via computer display or hard copy printout) of the information set out in subparagraph (C) of this paragraph of:

(i) the original controlled substance prescription drug orders currently authorized for refilling; and

(ii) the current refill history for Schedules III, IV, and V controlled substances for the immediately preceding six-month period.

(K) In the event that a pharmacy using [~~that uses~~] a data processing system experiences system downtime, the following is applicable:

(i) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded, or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(ii) all of the appropriate data shall be retained for online [~~on-line~~] data entry as soon as the system is available for use again.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard copy prescription drug order;

(B) on the daily hard copy printout; or

(C) via the computer display.

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Transfer of prescription drug order information. For the purpose of initial or refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(1) The transfer of original prescription drug order information for controlled substances listed in Schedules [~~Schedule~~] III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, online [~~on-line~~] database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(2) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(3) The transfer is communicated orally by telephone or via facsimile directly by a pharmacist to another pharmacist₁ [;] by a pharmacist to a pharmacist-intern₁ [;] or by a pharmacist-intern to another pharmacist.

(4) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(5) The individual transferring the prescription drug order information shall [~~ensure the following occurs~~]:

(A) write the word "void" on the face of the invalidated prescription or the prescription is voided in the data processing system;

(B) record the name, address, and if for a controlled substance, the DEA registration number of the pharmacy to which it was transferred, and the name of the receiving individual on the reverse of the invalidated prescription or stored with the invalidated prescription drug order in the data processing system;

(C) record the date of the transfer and the name of the individual transferring the information; and

(D) if the prescription is transferred electronically, provide the following information:

(i) date of original dispensing and prescription number;

(ii) number of refills remaining and if a controlled substance, the date(s) and location(s) of previous refills;

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

(iv) name of the individual transferring the prescription; and

(v) if a controlled substance, the name, address, [~~and~~] DEA registration number, and prescription number from the pharmacy that originally dispensed the prescription, if different.

(6) The individual receiving the transferred prescription drug order information shall:

(A) write the word "transfer" on the face of the prescription or indicate in the prescription record that [~~indicates~~] the prescription was a transfer; and

(B) reduce to writing all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions)₂ and [~~including~~] the following [~~information~~];

(i) date of issuance and prescription number;

(ii) original number of refills authorized on the original prescription drug order;

(iii) date of original dispensing;

(iv) number of valid refills remaining, and if a controlled substance, the date(s) and location(s) of previous refills;

(v) name, address, and if for a controlled substance, the DEA registration number of the transferring pharmacy;

(vi) name of the individual transferring the prescription; and

(vii) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally dispensed the prescription, if different; or

(C) if the prescription is transferred electronically, create an electronic record for the prescription that includes the receiving pharmacist's name and all of the information transferred with the prescription including all of the information required to be on a prescription as specified in subsection (b)(7) of this section (relating to Prescriptions)₂ and the following:

(i) date of original dispensing;

(ii) number of refills remaining and if a controlled substance, the prescription number(s), date(s) and location(s) of previous refills;

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

(iv) name of the individual transferring the prescription; and

(v) name, address, and if for a controlled substance, the DEA registration number, of the pharmacy that originally filled the prescription.

(7) Both the individual transferring the prescription and the individual receiving the prescription must engage in confirmation of the prescription information by such means as:

(A) the transferring individual faxes the hard copy prescription to the receiving individual; or

(B) the receiving individual repeats the verbal information from the transferring individual and the transferring individual verbally confirms that the repeated information is correct.

(8) Pharmacies transferring prescriptions electronically shall comply with the following:

(A) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided, however, that during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient or a pharmacist, and the prescription may be read to a pharmacist by telephone;[-]

(B) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes[-];

(C) If the data processing system does not have the capacity to store all the information as specified in paragraphs (5) and (6) of this subsection, the pharmacist is required to record this information on the original or transferred prescription drug order;[-]

(D) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders that have been previously transferred; and[-]

(E) Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met:[-]

(i) The original prescription is voided and the pharmacies' data processing systems [shaH] store all the information as specified in paragraphs (5) and (6) of this subsection;[-]

(ii) Pharmacies not owned by the same entity may electronically access the same prescription drug order records, provided the owner, chief executive officer, or designee of each pharmacy signs an agreement allowing access to such prescription drug order records; and[-]

(iii) An electronic transfer between pharmacies may be initiated by a pharmacist intern, pharmacy technician, or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(9) An individual may not refuse to transfer original prescription information to another individual who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be completed within four business hours of the request.

(10) When transferring a compounded prescription, a pharmacy is required to provide all of the information regarding the

compounded preparation, including the formula, unless the formula is patented or otherwise protected, in which case, the transferring pharmacy shall, at a minimum, provide the quantity or strength of all of the active ingredients of the compounded preparation.

(11) The electronic transfer of multiple or bulk prescription records between two pharmacies is permitted provided:

(A) a record of the transfer as specified in paragraph (5) of this subsection is maintained by the transferring pharmacy;

(B) the information specified in paragraph (6) of this subsection is maintained by the receiving pharmacy; and

(C) in the event that the patient or patient's agent is unaware of the transfer of the prescription drug order record, the transferring pharmacy must notify the patient or patient's agent of the transfer and must provide the patient or patient's agent with the telephone number of the pharmacy receiving the multiple or bulk prescription drug order records.

(h) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained that indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule II controlled substance, the following is applicable:[-]

(A) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222) to the distributing pharmacy; and[-]

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222) titled "To Be Filled in by Supplier";

(ii) maintain Copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and

(iii) forward Copy 2 of the DEA order form (DEA 222) to the Divisional Office of the Drug Enforcement Administration.

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

(1) a log of the initials or identification codes that [will] identify each pharmacist, pharmacy technician, and pharmacy technician trainee who is involved in the dispensing process[.] in the pharmacy's data processing system (the initials or identification code shall be unique to ensure that each individual can be identified, i.e., identical initials or identification codes shall not be used). Such log shall be maintained at the pharmacy for at least seven years from the date of the transaction;

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

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

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

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

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

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

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

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

(A) reports of theft or significant loss of controlled substances to the DEA and the board;

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

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

(j) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met:[.]

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

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

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories that shall be maintained at the pharmacy[.]

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location[.]

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records; and[.]

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

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

(l) Documentation of consultation. When a pharmacist consults a prescriber as described in this section, the pharmacist shall document such occurrences on the hard copy or in the pharmacy's data processing system associated with the prescription [such occurrences] and shall include the following information:

(1) date the prescriber was consulted;

(2) name of the person communicating the prescriber's instructions;

(3) any applicable information pertaining to the consultation; and

(4) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation if the information is recorded on the hard copy prescription.

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 December 18, 2019.

TRD-201904915

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

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: February 2, 2020

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



CHAPTER 295. PHARMACISTS

22 TAC §295.9

The Texas State Board of Pharmacy proposes amendments to §295.9, concerning Inactive License. The amendments, if adopted, add a requirement for one hour of continuing education on pain management as specified in section 481.0764 of the Texas Controlled Substances Act, and remove a requirement for one hour of continuing education on opioid abuse.

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

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

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

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

§295.9. *Inactive License.*

(a) Placing a license on inactive status. A person who is licensed by the board to practice pharmacy but who is not eligible to renew the license for failure to comply with the continuing education requirements of the Act, Chapter 559, Subchapter A, and who is not engaged in the practice of pharmacy in this state, may place the license on inactive status at the time of license renewal or during a license period as follows:

(1) To place a license on inactive status at the time of renewal, the licensee shall:

(A) complete and submit before the expiration date a pharmacist license renewal application provided by the board;

(B) state on the renewal application that the license is to be placed on inactive status and that the licensee shall not practice pharmacy in Texas while the license is inactive; and

(C) pay the fee for renewal of the license as specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees).

(2) To place a license on inactive status at a time other than the time of license renewal, the licensee shall:

(A) return the current renewal certificate to the board;

(B) submit a signed statement stating that the licensee shall not practice pharmacy in Texas while the license is inactive, and the date the license is to be placed on inactive status; and

(C) pay the fee for issuance of an amended license as specified in §295.5(e) of this title (relating to Pharmacist License or Renewal Fees).

(b) Prohibition against practicing pharmacy in Texas with an inactive license. A holder of a license that is on inactive status shall not practice pharmacy in this state. The practice of pharmacy by a holder of a license that is on inactive status constitutes the practice of pharmacy without a license.

(c) Reactivation of an inactive license.

(1) A holder of a license that is on inactive status may return the license to active status by:

(A) applying for active status on a form prescribed by the board;

(B) providing copies of completion certificates from approved continuing education programs as specified in §295.8(e) of this title (relating to Continuing Education Requirements) for 30 hours including at least one contact hour (0.1 CEU) shall be related to Texas pharmacy laws or rules and, for applications received before September 1, 2023, at least one contact hour (0.1 CEU) shall be related to best practices, alternative treatment options, and multi-modal approaches to pain management as specified in §481.0764 of the Texas Health and Safety Code [and at least one contact hour (0.1 CEU) shall be related to opioid abuse]. Approved continuing education earned within two years prior to the licensee applying for the return to active status may be applied toward the continuing education requirement for reactivation of the license but may not be counted toward subsequent renewal of the license; and

(C) paying the fee specified in paragraph (2) of this subsection.

(2) If the application for reactivation of the license is made at the time of license renewal, the applicant shall pay the license renewal fee specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees). If the application for reactivation of the license is made at a time other than the time of license renewal, the applicant shall pay the fee for issuance of an amended license to practice pharmacy as specified in §295.5(e) of this title (relating to Pharmacist License or Renewal Fees).

(3) In an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for pharmacist services, the executive director of the board, in his/her discretion, may allow a pharmacist whose license has been inactive for no more than two years to reactivate their license prior to obtaining the required continuing education specified in paragraph (1)(B) of this subsection, provided the pharmacist completes the continuing education requirement within six months of reactivation of the license. If the required continuing education is not provided within six months, the license shall return to an inactive status.

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 December 18, 2019.

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

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: February 2, 2020

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



22 TAC §295.13

The Texas State Board of Pharmacy proposes amendments to §295.13, concerning Drug Therapy Management by a Pharmacist under Written Protocol of a Physician. The amendments, if adopted, specify the circumstances under which physician delegation to a pharmacist of specific acts of drug therapy management may occur, in accordance with Senate Bill 1056.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to provide consistency between state law and Board rules regarding the circumstances under which a physician may delegate to a pharmacist specific acts of drug therapy management. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State

Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

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

§295.13. *Drug Therapy Management by a Pharmacist under Written Protocol of a Physician.*

(a) Purpose. The purpose of this section is to provide standards for the maintenance of records of a pharmacist engaged in the provision of drug therapy management as authorized in Chapter 157 of the Medical Practice Act and §554.005 of the Act.

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

(1) Act--The Texas Pharmacy Act, Chapter 551 - 566 and 568 - 569, Occupations Code, as amended.

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

(3) Confidential record--Any health-related record maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication order.

(4) Drug therapy management--The performance of specific acts by pharmacists as authorized by a physician through written protocol. Drug therapy management does not include the selection of drug products not prescribed by the physician, unless the drug product is named in the physician initiated protocol or the physician initiated record of deviation from a standing protocol. Drug therapy management may include the following:

(A) collecting and reviewing patient drug use histories;

(B) ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration;

(C) ordering drug therapy related laboratory tests;

(D) implementing or modifying drug therapy following diagnosis, initial patient assessment, and ordering of drug therapy by a physician as detailed in the protocol; or

(E) any other drug therapy related act delegated by a physician.

(5) Medical Practice Act--The Texas Medical Practice Act, Subtitle B, Occupations Code, as amended.

(6) Written protocol--A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under the Medical Practice Act.

(A) A written protocol must contain at a minimum the following:

(i) a statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of drug therapy management;

(ii) a statement identifying the individual pharmacist authorized to dispense drugs and to engage in drug therapy management as delegated by the physician;

(iii) a statement identifying the types of drug therapy management decisions that the pharmacist is authorized to make which shall include:

(I) a statement of the ailments or diseases involved, drugs, and types of drug therapy management authorized; and

(II) a specific statement of the procedures, decision criteria, or plan the pharmacist shall follow when exercising drug therapy management authority;

(iv) a statement of the activities the pharmacist shall follow in the course of exercising drug therapy management authority, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made. Documentation shall be recorded within a reasonable time of each intervention and may be performed on the patient medication record, patient medical chart, or in a separate log book; and

(v) a statement that describes appropriate mechanisms and time schedule for the pharmacist to report to the physician monitoring the pharmacist's exercise of delegated drug therapy management and the results of the drug therapy management.

(B) A standard protocol may be used or the attending physician may develop a drug therapy management protocol for the individual patient. If a standard protocol is used, the physician shall record what deviations, if any, from the standard protocol are ordered for that patient.

(c) Physician delegation to a pharmacist.

(1) As specified in Chapter 157 of the Texas Medical Practices Act, a physician may delegate to a properly qualified and trained pharmacist acting under adequate physician supervision the performance of specific acts of drug therapy management authorized by the physician through the physician's order, standing medical order, standing delegation order, or other order or protocol.

(2) A delegation under paragraph (1) of this subsection may include:

(A) the implementation or modification of a patient's drug therapy under a protocol, if:

(i) the delegation follows a diagnosis, initial patient assessment, and drug therapy order by the physician; and

(ii) the pharmacist maintains a copy of the protocol for inspection until at least the seventh anniversary of the expiration date of the protocol; or

(B) [~~including~~] the authority to sign a prescription drug order for dangerous drugs, if:

(i) [~~(A)~~] the delegation follows a diagnosis, initial patient assessment, and drug therapy order by the physician;

(ii) [~~(B)~~] the pharmacist practices in a federally qualified health center, hospital, hospital-based clinic, or an academic health care institution; and

(iii) [~~(C)~~] the federally qualified health center, hospital, hospital-based clinic, or academic health care institution in which the pharmacist practices has bylaws and a medical staff policy that permit a physician to delegate to a pharmacist the management of a patient's drug therapy.

(3) A pharmacist who signs a prescription for a dangerous drug under authority granted under paragraph (2) of this subsection shall:

(A) notify the board that a physician has delegated the authority to sign a prescription for dangerous drugs. Such notification shall:

(i) be made on an application provided by the board;

(ii) occur prior to signing any prescription for a dangerous drug;

(iii) be updated annually; and

(iv) include a copy of the written protocol.

(B) include the pharmacist's name, address, and telephone number as well as the name, address, and telephone number of the delegating physician on each prescription for a dangerous drug signed by the pharmacist.

(4) The board shall post the following information on its web-site:

(A) the name and license number of each pharmacist who has notified the board that a physician has delegated authority to sign a prescription for a dangerous drug;

(B) the name and address of the physician who delegated the authority to the pharmacist; and

(C) the expiration date of the protocol granting the authority to sign a prescription.

(d) Pharmacist Training Requirements.

(1) Initial requirements. A pharmacist shall maintain and provide to the Board within 24 hours of request a statement attesting to the fact that the pharmacist has within the last year:

(A) completed at least six hours of continuing education related to drug therapy offered by a provider approved by the Accreditation Council for Pharmacy Education (ACPE); or

(B) engaged in drug therapy management as allowed under previous laws or rules. A statement from the physician supervising the acts shall be sufficient documentation.

(2) Continuing requirements. A pharmacist engaged in drug therapy management shall annually complete six hours of continuing education related to drug therapy offered by a provider approved by the Accreditation Council for Pharmacy Education (ACPE). (These hours may be applied towards the hours required for renewal of a license to practice pharmacy.)

(e) Supervision. Physician supervision shall be as specified in the Medical Practice Act, Chapter 157 and shall be considered adequate if the delegating physician:

(1) is responsible for the formulation or approval of the written protocol and any patient-specific deviations from the protocol and review of the written protocol and any patient-specific deviations from the protocol at least annually and the services provided to a patient under the protocol on a schedule defined in the written protocol;

(2) has established and maintains a physician-patient relationship with each patient provided drug therapy management by a delegated pharmacist and informs the patient that drug therapy will be managed by a pharmacist under written protocol;

(3) is geographically located so as to be able to be physically present daily to provide medical care and supervision;

(4) receives, on a schedule defined in the written protocol, a periodic status report on the patient, including any problem or complication encountered;

(5) is available through direct telecommunication for consultation, assistance, and direction; and

(6) determines that the pharmacist to whom the physician is delegating drug therapy management establishes and maintains a pharmacist-patient relationship with the patient.

(f) Records.

(1) Maintenance of records.

(A) Every record required to be kept under this section shall be kept by the pharmacist and be available, for at least two years from the date of such record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

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

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

(2) Written protocol.

(A) A copy of the written protocol and any patient-specific deviations from the protocol shall be maintained by the pharmacist.

(B) A pharmacist shall document all interventions undertaken under the written protocol within a reasonable time of each intervention. Documentation may be maintained in the patient medication record, patient medical chart, or in a separate log.

(C) A standard protocol may be used or the attending physician may develop a drug therapy management protocol for the individual patient. If a standard protocol is used, the physician shall record what deviations, if any, from the standard protocol are ordered for that patient. A pharmacist shall maintain a copy of any deviations from the standard protocol ordered by the physician.

(D) Written protocols, including standard protocols, any patient-specific deviations from a standard protocol, and any individual patient protocol, shall be reviewed by the physician and pharmacist at least annually and revised if necessary. Such review shall be documented in the pharmacist's records. Documentation of all services provided to the patient by the pharmacist shall be reviewed by the physician on the schedule established in the protocol.

(g) Confidentiality.

(1) In addition to the confidentiality requirements specified in §291.27 of this title (relating to Confidentiality) a pharmacist shall comply with:

(A) the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and any rules adopted pursuant to this act;

(B) the requirements of Medical Records Privacy contained in Chapter 181, Health and Safety Code;

(C) the Privacy of Health Information requirements contained in Chapter 28B of the Insurance Code; and

(D) any other confidentiality provisions of federal or state laws.

(2) This section shall not affect or alter the provisions relating to the confidentiality of the physician-patient communication as specified in the Medical Practice Act, Chapter 159.

(h) Construction and Interpretation.

(1) As specified in the Medical Practice Act, Chapter 157, this section does not restrict the use of a pre-established health care program or restrict a physician from authorizing the provision of patient care by use of a pre-established health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols.

(2) As specified in the Medical Practice Act, Chapter 157, this section may not be construed to limit, expand, or change any provision of law concerning or relating to therapeutic drug substitution or administration of medication, including the Act, §554.004.

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 December 18, 2019.

TRD-201904916

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

Executive Director

Texas State Board of Pharmacy

Earliest possible date of adoption: February 2, 2020

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



CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §315.3

The Texas State Board of Pharmacy proposes amendments to §315.3, concerning Prescriptions - Effective September 1, 2016. The amendments, if adopted, remove the effective date from the short title and add a requirement for a person dispensing a Schedule II controlled substance prescription to provide written notice on the safe disposal of controlled substance prescription drugs, in accordance with House Bill 2088.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be clearer regulatory language and consistency between state law and Board rules regarding notice requirements for Schedule II controlled substance prescription drugs. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

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

§315.3. Prescriptions.

(a) Schedule II Prescriptions.

(1) Except as provided by subsection (e) of this section, a practitioner, as defined in, §481.002(39)(A) of the TCSA, must issue a written prescription for a Schedule II controlled substance only on an official Texas prescription form or through an electronic prescription that meets all requirements of the TCSA. This subsection also applies to a prescription issued in an emergency situation.

(2) A practitioner who issues a written prescription for any quantity of a Schedule II controlled substance must complete an official prescription form.

(3) Except as provided by subsection (f) of this section, a practitioner may issue multiple written prescriptions authorizing a patient to receive up to a 90-day supply of a Schedule II controlled substance provided:

(A) each prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice;

(B) the practitioner provides written instructions on each prescription, other than the first prescription if the practitioner intends for that prescription to be filled immediately, indicating the earliest date on which a pharmacy may dispense each prescription; and

(C) the practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse.

(4) A schedule II prescription must be dispensed no later than 21 days after the date of issuance or, if the prescription is part of a multiple set of prescriptions, issued on the same day, no later than 21 days after the earliest date on which a pharmacy may dispense the prescription as indicated on each prescription.

(5) A person dispensing a Schedule II controlled substance prescription shall provide written notice on the safe disposal of controlled substance prescription drugs that includes information on locations at which Schedule II controlled substance prescription drugs are accepted for safe disposal. In lieu of listing those locations, the notice may alternatively provide the address of an Internet website specified by the board that provides a searchable database of locations at which Schedule II controlled substance prescription drugs are accepted for safe disposal. The written notice may be provided to the patient in an electronic format, such as by e-mail, if the patient or patient's agent requests the notice in an electronic format and the request is documented. Such written notice is not required if:

(A) the Schedule II controlled substance prescription drug is dispensed at a pharmacy or other location that:

(i) is authorized to take back those drugs for safe disposal; and

(ii) regularly accepts those drugs for safe disposal;

or

(B) the dispenser provides to the person to whom the Schedule II controlled substance prescription drug is dispensed, at the time of dispensation and at no cost to the person:

(i) a mail-in pouch for surrendering unused controlled substance prescription drugs; or

(ii) chemicals to render any unused drugs unusable or non-retrievable.

(b) Schedules III through V Prescriptions.

(1) A practitioner, as defined §§481.002(39)(A), (C), (D) of the TCSA, may use prescription forms and order forms through individual sources. A practitioner may issue, or allow to be issued by a person under the practitioner's direction or supervision, a Schedule III through V controlled substance on a prescription form for a valid medical purpose and in the course of medical practice.

(2) Except as provided in subsection (f) of this section, Schedule III through V prescriptions may be refilled up to five times within six months after date of issuance.

(c) Electronic prescription. A practitioner is permitted to issue and to dispense an electronic controlled substance prescription only in accordance with the requirements of the Code of Federal Regulations, Title 21, Part 1311.

(d) Controlled substance prescriptions may not be postdated.

(e) Advanced practice registered nurses or physician assistants may only use the official prescription forms issued with their name, address, phone number, and DEA numbers, and the delegating physician's name and DEA number.

(f) Opioids for the treatment of acute pain.

(1) For the treatment of acute pain, as defined in §481.07636 of the TCSA, a practitioner may not:

(A) issue a prescription for an opioid in an amount that exceeds a 10-day supply; or

(B) provide for a refill of the opioid prescription.

(2) Paragraph (1) of this subsection does not apply to a prescription for an opioid approved by the U.S. Food and Drug Administration for the treatment of substance addiction that is issued by a practitioner for the treatment of substance addiction.

(3) A dispenser is not subject to criminal, civil, or administrative penalties for dispensing or refusing to dispense a controlled substance under a prescription that exceed the limits provided by paragraph (1) of this subsection.

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

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

Executive Director

Texas State Board of Pharmacy

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



22 TAC §315.16

The Texas State Board of Pharmacy proposes a new rule §315.16, concerning Patient Access to Prescription Monitoring Program Prescription Record. The new rule, if adopted, establishes the policy and procedures for a patient or the patient's legal guardian to obtain a copy of the patient's Prescription Monitoring Program prescription record, in accordance with House Bill 3284.

Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. Ms. Benz has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to provide consistency between state law and Board rules and to provide procedures for a patient or the patient's legal guardian to obtain a copy of the patient's Prescription Monitoring Program prescription record. There is no anticipated adverse economic impact on large, small or micro-businesses (pharmacies), rural communities, or local or state employment. Therefore, an economic impact statement and regulatory flexibility analysis are not required.

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

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

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

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

(4) The proposed rule does not require an increase or decrease in licensure fees paid to the agency, but does provide for a fee to obtain the records in accordance with state law;

(5) The proposed rule does create a new regulation in order to be consistent with state law;

(6) The proposed rule does not limit or expand an existing regulation;

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

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

Written comments on the proposed rule may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

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

The statutes affected by the proposed rule: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.16. Patient Access to Prescription Monitoring Program Prescription Record.

(a) A patient, the patient's parent or legal guardian if the patient is a minor, or the patient's legal guardian if the patient is an incapacitated person as defined by §1002.017(2) of the Estates Code, may obtain a copy of the patient's prescription record, including a list of persons who have accessed that record, as authorized in §481.076(a)(9) of the Texas Controlled Substances Act, by submitting the following to the board:

(1) a completed, notarized patient data request form, including any information or supporting documentation requested on the form;

(2) a copy of the requestor's driver's license or other state photo identity card issued by the state's Department of Motor Vehicles;

(3) if requesting as a parent or legal guardian of the patient, a copy of the patient's birth certificate or the order of guardianship over the patient; and

(4) a \$50 fee.

(b) The board shall deliver the requested records to the requestor via certified mail to the address listed on the requestor's driver's license or other state photo identity card issued by the state's Department of Motor Vehicles.

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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TRD-201904917



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.334

The Comptroller of Public Accounts proposes amendments to §3.334, concerning local sales and use taxes. In the wake of *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (June 21, 2018), the amendments provide that remote sellers that are required to collect Texas use tax under §3.286 of this title (relating to Seller's and Purchaser's Responsibilities) should collect local use tax based on the destination location. The amendments also implement the requirement that a seller located in Texas collects local use tax when the seller ships or delivers a taxable item into a local jurisdiction where those use taxes exceed the local sales tax where the sale is consummated. The comptroller also implements House Bill 1525 and House Bill 2153, 86th Legislature, 2019. House Bill 1525 establishes local sales and use tax collection responsibilities on marketplace providers. House Bill 2153 establishes a single local use tax rate that remote sellers may elect to use. The amendments also clarify provisions concerning fulfillment, temporary places of business of the seller, places of business of the seller receiving more than three orders, traveling salespersons, orders over the Internet, and orders placed in person.

Throughout the section, the comptroller adds or amends rule titles. The comptroller also amends cross-references accordingly. The comptroller does not intend to make substantive changes through these additions of and amendments to rule titles and through the amendments to cross-references. The comptroller also reorganizes this section for clarity and readability.

The comptroller amends the definition of "Comptroller's website" in subsection (a)(4) to provide the correct website address.

The comptroller amends the definition of "engaged in business" in subsection (a)(7) to conform the reference to §3.286 of this title.

The comptroller amends subsection (a)(9) to identify activities that are not included in the definition of the term "fulfill".

The comptroller adds a definition for "Internet order" in new subsection (a)(10) to distinguish between an order placed through the Internet as opposed to an order placed in person at a seller's location as contemplated in Tax Code, §321.203(c) and §323.203(c). The comptroller has determined that orders placed on a website, through a software application, or other method using the Internet constitute orders over the Internet. Orders placed by phone call using Voice over Internet Protocol or a mobile device are not considered Internet orders. The

comptroller distinguishes orders through a computer or mobile device of the seller because the use of the Internet by sellers and purchasers to place orders has resulted in confusion as to whether an order is placed in person or over the Internet. For example, sellers use the Internet to place orders for items that are not in the store. However, mobile devices have made it possible for purchasers to place online orders at any location, including within a location of the seller. Subsequent paragraphs are renumbered.

The comptroller adds a definition for "marketplace provider" in new subsection (a)(15) as defined in §3.286 of this title.

The comptroller adds a definition for "order placed in person" in new subsection (a)(16). Orders placed in person are those orders placed with the seller while the purchaser is physically present at a seller's location and using a seller's system, computer, or other device. As a seller may use the Internet, a phone, or a catalog to make an order, the definition clarifies that an order is still placed in person regardless of whether the seller uses the Internet, a phone, or a catalog to make the order. Similarly, as a purchaser may use a personal mobile device to make an order while physically present at a seller's location, the definition excludes Internet orders, which as defined are placed from a purchaser's device. Subsequent paragraphs are renumbered.

The comptroller amends the definition of "place of business of the seller - general definition" in renumbered subsection (a)(17) to specify that a website, software application, or other method used to place an Internet order is not a place of business of the seller. Tax Code, §321.002(a)(3)(A) defines "place of business of the retailer" as "an established outlet, office, or location operated by the retailer or the retailer's agent or employee for the purpose of receiving orders for taxable items and includes any location at which three or more orders are received by the retailer during a calendar year." A website, software application, or other method used to place an Internet order is not an established outlet, office, or location operated by the seller and is therefore, excluded from the definition. The comptroller reflects these changes throughout the section.

The comptroller also amends the definition to delete repetitive language and an example that provides that a home office at which three or more items are sold through an online auction website is a place of business of the seller. The comptroller deletes a reference to "administrative offices" because the comptroller determines that an administrative office does not meet the definition of a place of business of the seller.

The comptroller also adds to the definition of "place of business of the seller - general definition" that an outlet, office, facility, or any similar location that contracts with a business to process certain orders or invoices is not a place of business of the seller if the comptroller determines that these certain locations are for the sole purpose to avoid tax due or to rebate tax to the contracting location. This change is made pursuant to the definition "place of business of the retailer" in Tax Code, §321.002(a)(3)(B).

The comptroller adds a definition for "remote seller" in new subsection (a)(19) as defined in §3.286 of this title. Subsequent paragraphs are renumbered.

The comptroller amends the definition of "temporary place of business of the seller" in renumbered subsection (a)(23) to clarify that a temporary place of business of the seller includes a sale outside the walls of a distribution center, manufacturing plant, storage yard, warehouse, or similar facility of the seller in a parking lot or similar space sharing the same physical address as the

facility. Sellers may hold sales to the public outside the walls of their facilities on a temporary basis. The comptroller clarifies that these sales constitute temporary places of business of the seller. The comptroller makes these changes throughout the section. Subsequent paragraphs are renumbered.

The comptroller adds new subsection (b), restating the provision of former subsection (e) concerning place of business - special definitions. The new subsection (b) is substantially the same as former subsection (e) but with changes to more closely reflect the definition of "place of business of the retailer" in Tax Code, §321.002(a)(3)(A). A seller does not receive orders at administrative offices that solely serve as the base of operations for a traveling salesperson or that provide administrative support to a traveling salesperson. Moreover, the mere fact that a salesperson is assigned to work from, or work at, a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller does not mean that a seller receives orders at these locations. Therefore, these locations by themselves do not meet the definition of a place of business of the retailer under Tax Code, §321.002(a)(3)(A). The comptroller amends the section to reflect these changes throughout. Therefore, the comptroller no longer includes administrative offices supporting traveling salespersons and distribution centers, manufacturing plants, storage yards, warehouses, or similar facilities operated by a seller at which salespersons are assigned to work in the definition of "place of business of the seller."

In new paragraph (1)(A), the comptroller clarifies that locations operated by a seller must receive three or more orders in a calendar year from persons other than employees, independent contractors and natural persons affiliated with the seller to be considered a place of business of the seller in Texas. In new paragraph (3) the comptroller restates the provisions from former subsection (e) relating to purchasing offices with minor changes for ease of readability.

The comptroller adds new subsection (c) to include the existing provisions of former subsection (h) concerning local sales tax. The new subsection (c) is similar to former subsection (h) but with some changes. New paragraph (1) provides the general sales tax rules as applied to specific situations and combines the provisions related to the consummation of sale rule, as that language appeared in former subsections (h)(1) and (h)(3).

New subparagraph (A) restates the deleted language in former subsection (h)(3)(A) relating to the consummation of sale rule for orders placed in person at a seller's place of business in Texas. The comptroller includes in subparagraph (A) orders placed at a temporary place of business of the seller. The comptroller does not add the provisions found in former subsection (h)(6)(C) because it repeats the general consummation of sale provisions applicable to temporary places of business.

Additionally, throughout new paragraph (1), the comptroller incorporates the language found in former subsection (h)(4) concerning traveling salespersons. Tax Code, §321.002(a)(3)(A) does not support treating administrative offices or other locations that are not places of business of the seller that merely serve as a location from which a traveling salesperson operates as a place of business of the seller. The comptroller makes this change to conform the consummation of sales made by traveling salespersons to Tax Code, §321.203 and §323.203. The comptroller does not incorporate the examples found in former subsection (h)(4) because the examples merely restate the consummation of sale rules.

The comptroller explicitly provides in new subparagraph (A) that orders taken by traveling salespersons are not placed in person at the seller's place of business in Texas. Traveling salespersons typically take orders at the customer's location and the customer's location is not a place of business "operated by the seller" as required by Tax Code, §321.002(a)(3)(A). See Comptroller's Decision No. 48,843 (2009) ("According to the plain meaning of the statutory definition, a site must be "operated by the retailer" before it can be considered the retailer's place of business.").

The comptroller adds new subparagraph (B) to include the provision in former subsection (h)(3)(B) concerning orders received at a place of business of the seller in Texas and fulfilled at a location that is not a place of business of the seller with changes.

In new clause (i), the comptroller does not incorporate the phrase "through the Internet" found in former subsection (h)(3)(B). Clause (i) does not apply to orders over the Internet because Internet orders are not received at a place of business of the seller in Texas. The comptroller also includes language concerning traveling salespersons in new clause (i).

In new clause (ii), the comptroller addresses where orders taken by traveling salesperson are considered received. The comptroller clarifies that orders taken by traveling salespersons are not received by the seller at the purchaser's location because the purchaser's location is not a place of business of the seller. See Comptroller's Decision No. 48,843 (2009).

The comptroller adds new subparagraph (C) to restate the provision in former subsection (h)(3)(C) concerning orders fulfilled at a place of business of the seller in Texas. The language is the same except for new language addressing traveling salespersons.

The comptroller adds new subparagraph (D) restating the provision in former subsection (h)(3)(D) concerning orders fulfilled within the state at a location that is not a place of business of the seller. The language is the same as it appeared in former subsection (h)(3)(D), except for new language addressing traveling salespersons.

The comptroller adds new subparagraph (E) and includes the provision in former subsection (h)(3)(E) concerning orders received outside of the state and fulfilled outside of the state with changes addressing traveling salespersons operating from a location outside of Texas and remote sellers.

In subparagraph (E) and throughout the section, the comptroller amends the language to implement the *Wayfair* decision. The *Wayfair* decision clarified the substantial nexus requirement established in the United States Supreme Court analysis of the Due Process and Commerce Clauses of the United States Constitution. The Court stated that "{substantial} nexus is established when a taxpayer {or collector} 'avails itself of the substantial privilege of carrying on business' in that jurisdiction." *Wayfair*, 138 S. Ct. at 2099 (quoting *Polar Tankers, Inc. v. City of Valdez*, 557 U.S. 1, 11 (2009)). The Court also reiterated that "States may not impose undue burdens on interstate commerce."

In light of the *Wayfair* decision, the comptroller provides in subparagraph (E) that a remote seller that is required to collect Texas use tax under §3.286(b)(2) must also collect local use tax based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession unless the remote seller elects to collect the single local use tax rate enacted in House Bill 2153. See Tax Code, §321.205(c) and §323.205(c).

The comptroller adds new subparagraph (F) restating the provision in former subsection (h)(3)(F) concerning an exception for qualifying economic development agreements entered into before January 1, 2009, pursuant to Tax Code, §321.203(c-4) - (c-5) or §323.203(c-4) - (c-5) .

The comptroller adds new paragraph (2) and includes the language in former subsection (h)(1) concerning local sales taxes due and local use taxes due without any changes. The comptroller restates the language in former subsection (h)(2) concerning multiple special purpose district taxes and multiple transit authority taxes in paragraph (3) without changes to the language.

The comptroller adds new paragraph (4) to include the language found in former subsection (h)(5) concerning drop shipments, but does not incorporate the examples found in former subsection (h)(5)(A). The comptroller adds new subparagraph (B) restating the language found in former subsection (h)(5)(B) without changes.

The comptroller adds new paragraph (5) to add the language found in former subsection (h)(6) concerning itinerant vendors and vending machines without changes to the language.

The comptroller adds new paragraph (6) to address the consummation of sale for Internet orders. This subsection becomes effective April 1, 2020.

In new subparagraph (A), the comptroller provides the general rule, with certain exceptions, that Internet orders are not received at a place business of the seller in Texas. A website, software application, or other method used to place an Internet order is excluded from the definition of place of business of the seller. Therefore, orders placed over the Internet are not received at a place of business of the seller in Texas.

In new subparagraph (B), the comptroller addresses orders placed using at the seller's device.

In new subparagraph (C), the comptroller addresses Internet orders fulfilled from a place of business of the seller in Texas.

In new subparagraph (D), the comptroller addresses Internet orders fulfilled from a location in Texas that is not a place of business of the seller in Texas.

In new subparagraph (E), the comptroller addresses Internet orders fulfilled from a location outside of the state.

In new subparagraph (F), the comptroller provides a temporary exception from the provisions regarding Internet orders for economic development agreements pursuant to Local Government Code, Chapters 380 and 381 and entered into before September 1, 2019.

The comptroller adds new subsection (d) to include the provisions in former subsection (i), relating to use tax. The comptroller adds new paragraph (1), which includes the language in former subsection (i)(1) concerning general local use tax rules with non-substantive changes for ease of readability.

The comptroller adds new paragraph (2) to include the provisions in former subsection (i)(2) concerning general use tax rules applied to specific situations with changes.

In light of the *Wayfair* decision, the comptroller gives effect to the Tax Code's requirement that sellers engaged in business in the state collect local use tax for sales consummated in Texas and for sales consummated outside Texas based on the local taxing jurisdictions in which a taxable item is first used, stored, or consumed, regardless of the specific local jurisdiction in which

a seller is engaged in business. See Tax Code, §§321.205, 322.105, and 323.205.

When a sale is consummated in Texas, a seller is engaged in business in this state through the presence of property or employees in the state. See Tax Code, §§151.107, 321.203, and 323.203. Therefore, the language that a seller be engaged in business in a local jurisdiction for sales consummated in Texas is superfluous. Moreover, an engaged in business standard for local use tax does not give effect to the Tax Code's requirement that a seller collect local use tax that is due and creates an opportunity for sellers to avoid collecting local use tax due. See Tax Code §§151.103, 321.003, 321.205, 322.108, 323.003, and 323.205. Therefore, the comptroller deletes the "engaged in business" requirement for local use tax throughout the section.

In new paragraph (2), the comptroller implements the *Wayfair* decision by clarifying that the seller is responsible for collecting the local use tax due on the sale based upon the location in this state to which the order is shipped or delivered or at which the purchaser of the item takes possession.

In new subparagraphs (B) and (C), the comptroller also explicitly states that the location of the seller in Texas does not affect the determination of whether the seller is required to collect additional local use tax due. In new clauses (i) and (ii), the comptroller provides two examples to illustrate when a seller is required to collect additional local use taxes.

The comptroller adds new subsection (e) to include the provisions in former subsection (b), relating to the effects of other law, with minor non-substantive changes to the provisions as they appeared in former subsection (b).

The comptroller adds new subsection (f), to include the provisions of former subsection (c), relating to tax rates without changing the provisions as they appeared in former subsection (c).

The comptroller adds new subsection (g) to include the provisions of former subsection (d), relating to jurisdictional boundaries, combined areas, and city tax imposed through strategic partnership agreements, with non-substantive changes made to the language on combined areas for ease of readability.

The comptroller adds new subsection (h) to include the provisions in former subsection (f) concerning places of business and job sites crossed by local taxing jurisdiction boundaries with a change to the title of the subsection to read places of business of the seller. No other changes were made to those provisions.

The comptroller adds new subsection (i). Throughout new subsection (i), the comptroller implements the *Wayfair* decision for local use tax to address sales consummated in Texas and sales consummated outside of Texas, including sales by remote sellers.

In new paragraph (1), the comptroller adds the language found in former subsection (g)(1) with changes. The comptroller explicitly states in paragraph (1) that the location of the seller in Texas does not affect the determination of whether the seller is required to collect additional local use tax due.

In new paragraph (2), the comptroller includes the language in former subsection (g)(2) with changes. The comptroller makes a cross-reference to new subsection (i)(3) of the amendment, which implements House Bill 2153. The comptroller also clarifies that new subsection (i)(2) applies to sales not consummated in Texas. The amendment provides that local use tax is based upon

the location in this state to which the item is shipped or delivered or at which the purchaser takes possession.

In new paragraph (3), the amendment addresses local use tax for remote sellers and implements the single local use tax rate for remote sellers enacted in House Bill 2153.

New subparagraph (A)(i) provides that a remote seller is required to collect and remit using the combined rate of all applicable local use taxes based on the location to which the item is shipped or delivered or at which the purchaser takes possession. New subparagraph (A)(ii) provides that at the remote seller's election, the remote seller may elect to use the single local use tax rate published in the *Texas Register*.

New subparagraph (B) addresses the single local use tax rate when a remote seller stores tangible personal property in Texas to be sold on a marketplace. The comptroller recognizes that a remote seller selling tangible personal property on a marketplace may not have control of where their tangible personal property is stored. Therefore, to ease the burden on a remote seller, this provision allows the remote seller to elect the single local use tax rate.

New subparagraph (C) addresses notice requirements a remote seller sends to the comptroller of its election and revocation of election to use the single local use tax rate. New clause (i) provides that a remote seller must notify the comptroller of its election to use the single local use tax rate on a form prescribed by the comptroller or may notify the comptroller of the election on its use tax permit application form before being able to use the single local use tax rate. New clause (i) also requires that a remote seller use the single local use tax rate for all its sales of taxable items until the remote seller revokes the election in writing to the comptroller. New clause (ii) addresses the requirements for a remote seller to revoke its election to collect the single local use tax rate by filing a form prescribed by the comptroller by October 1 of the calendar year.

New subparagraph (D)(i) provides the initial single local use tax rate of 1.75%, which is in effect for the period beginning October 1, 2019, and ending December 31, 2019. Subparagraph (D)(ii) provides the initial single local use tax rate of 1.75%, which is in effect for the period beginning January 1, 2020, and ending December 31, 2020.

New subparagraph (E) provides that before the beginning of a calendar year, the comptroller will publish notice of the single local use tax rate that will be in effect for that calendar year in the *Texas Register*.

New subparagraph (F) provides the calculation for the single local use tax rate.

New subparagraph (G) provides that a purchaser may request a refund based on local use taxes paid in a calendar year. The refund is for the difference between the single local use tax rate paid by the purchaser and the amount the purchaser would have paid based on the combined tax rate for all applicable local use taxes. Non-permitted purchasers may request a refund directly from the comptroller on an annual basis without having to meet the requirements in §3.325(a)(1) of this title (relating to Refunds and Payments Under Protest) and the statute of limitation under Tax Code, §111.104.

New subparagraph (H) addresses marketplace providers to provide that a marketplace provider may only use the combined tax rate of all applicable local use taxes when computing the amount of local use tax to collect and remit.

In new paragraph (4), the comptroller restates the language in deleted subsection (g)(4) concerning purchasers responsible for accruing and remitting local taxes if the seller fails to collect without any changes.

In new paragraph (5), the comptroller restates the language in deleted subsection (g)(5) concerning local tax due on the sales price of a taxable item without any changes.

The comptroller adds new paragraph (6) to relieve a purchaser of liability for additional use tax if the purchaser pays local use tax using the single local use tax rate to an eligible remote seller electing to use the single local use tax rate. Paragraph (6) also requires the purchaser to verify on the comptroller's website that a remote seller has elected to use the single local use tax rate. Moreover, paragraph (6) provides that if a remote seller is not listed on the comptroller's website, the purchaser will be liable for additional use tax due.

The comptroller deletes existing subsection (b), relating to the effect of other law, as this information is contained in new subsection (e) with minor, non-substantive changes.

The comptroller deletes existing subsection (c) relating to tax rates, as that information is contained in new subsection (f) without change.

The comptroller deletes existing subsection (d) relating to jurisdictional boundaries, combined areas, and city tax imposed through strategic partnership agreements, as this information is contained in new subsection (g) with non-substantive changes made to the provisions on combined areas for ease of readability.

The comptroller deletes existing subsection (e) relating to place of business - special definitions, as this information is contained in new subsection (b) with changes.

The comptroller deletes existing subsection (f) concerning places of business and job sites crossed by local taxing jurisdiction boundaries, as this information is contained in to new subsection (h) with a change only to the title of the subsection to read places of business of the seller.

The comptroller deletes subsection (g) concerning sellers' and purchasers' responsibilities for collecting or accruing local taxes, as those provisions, except for subsection (g)(3), which was deleted in its entirety, are contained in new subsection (i) with changes.

The comptroller deletes existing subsection (h) concerning local sales tax, as this information is contained in new subsection (c) with changes.

The comptroller deletes existing subsection (i) concerning use tax, as this information is contained in new subsection (d) with changes.

The comptroller adds new subsection (k)(5) to implement House Bill 1525, to address sales of taxable items through marketplace providers. Subsequent paragraphs are renumbered.

The provisions related to remote sellers, single local use tax rate, and marketplace providers take effect October 1, 2019.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect, the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase

or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendments would benefit the public by conforming the rule to current statutes. 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 anticipated significant economic cost to the public.

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

The comptroller proposes this amendment under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to amend rules to reflect changes in the constitution or laws of the United States and judicial interpretations thereof.

The amendments implement Tax Code, §§151.0595 (Single Local Tax Rate for Remote Sellers), 321.203 (Consummation of Sale), and 323.203 (Consummation of Sale), and *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (June 21, 2018).

§3.334. Local Sales and Use Taxes.

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

(1) Cable system--The system through which a cable service provider delivers cable television or bundled cable service, as those terms are defined in §3.313 of this title (relating to Cable Television Service and Bundled Cable Service).

(2) City--An incorporated city, municipality, town, or village.

(3) City sales and use tax--The tax authorized under Tax Code, §321.101(a), including the additional municipal sales and use tax authorized under Tax Code, §321.101(b), the municipal sales and use tax for street maintenance authorized under Tax Code, §327.003, the Type A Development Corporation sales and use tax authorized under Local Government Code, §504.251, the Type B Development Corporation sales and use tax authorized under Local Government Code, §505.251, a sports and community venue project sales and use tax adopted by a city under Local Government Code, §334.081, and a municipal development corporation sales and use tax adopted by a city under Local Government Code, §379A.081. The term does not include the fire control, prevention, and emergency medical services district sales and use tax authorized under Tax Code, §321.106, or the municipal crime control and prevention district sales and use tax authorized under Tax Code, §321.108.

(4) Comptroller's website--The agency's website concerning local taxes located at: <https://comptroller.texas.gov/taxes/sales/> [<http://comptroller.texas.gov/taxinfo/local/>].

(5) County sales and use tax--The tax authorized under Tax Code, §323.101, including a sports and community venue project sales and use tax adopted by a county under Local Government Code, §334.081. The term does not include the county health services sales

and use tax authorized under Tax Code, §324.021, the county landfill and criminal detention center sales and use tax authorized under Tax Code, §325.021, or the crime control and prevention district sales and use tax authorized under Tax Code, §323.105.

(6) Drop shipment--A transaction in which an order is received by a seller at one location, but the item purchased is shipped by the seller from another location, or is shipped by the seller's third-party supplier, directly to a location designated by the purchaser.

(7) Engaged in business--This term has the meaning given in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities[; including Nexus, Permits, Returns and Reporting Periods, and Collection and Exemption Rules]).

(8) Extraterritorial jurisdiction--An unincorporated area that is contiguous to the corporate boundaries of a city as defined in Local Government Code, §42.021

(9) Fulfill--To complete an order by transferring a taxable item directly to a purchaser at a Texas location, or to ship or deliver a taxable item to a location in Texas designated by the purchaser. The term does not include tracking an order, determining shipping costs, managing inventory, or other activities that do not involve the transfer, shipment, or delivery of a taxable item to the purchaser or a location designated by the purchaser.

(10) Internet order--An order placed on a website, software application, or other method using the Internet by a purchaser using a computer or mobile device that does not belong to the seller. Internet order does not include an order placed by phone call using Voice over Internet Protocol or a mobile device.

(11) ~~[(10)]~~ Itinerant vendor--A person who travels to various locations for the purpose of receiving orders and making sales of taxable items and who does not operate a place of business. For example, a person who sells rugs from the back of a truck that the person drives to a different location each day is an itinerant vendor. A person who sells items through vending machines is also an itinerant vendor. A salesperson that operates out of an office, place of business, or other location that provides administrative support to the salesperson is not an itinerant vendor.

(12) ~~[(11)]~~ Kiosk--A small stand-alone area or structure:

(A) that is used solely to display merchandise or to submit orders for taxable items from a data entry device, or both;

(B) that is located entirely within a location that is a place of business of another seller, such as a department store or shopping mall; and

(C) at which taxable items are not available for immediate delivery to a purchaser.

(13) ~~[(12)]~~ Local taxes--Sales and use taxes imposed by any local taxing jurisdiction.

(14) ~~[(13)]~~ Local taxing jurisdiction--Any of the following:

(A) a city that imposes sales and use tax as provided under paragraph (3) of this subsection;

(B) a county that imposes sales and use tax as provided under paragraph (5) of this subsection;

(C) a special purpose district created under the Special District Local Laws Code or other provisions of Texas law that is authorized to impose sales and use tax by the Tax Code or other provisions of Texas law and as governed by the provisions of Tax Code, Chapters 321 or 323 and other provisions of Texas law; or

(D) a transit authority that imposes sales and use tax as authorized by Transportation Code, Chapters, 451, 452, 453, 457, or 460 and governed by the provisions of Tax Code, Chapter, 322.

(15) Marketplace provider--This term has the meaning given in §3.286 of this title.

(16) Order placed in person--An order placed by a purchaser with the seller while physically present at the seller's place of business on the system, computer, or other device of the seller, regardless of whether the seller uses the Internet, a phone, or a catalog to make the order. The term does not include Internet orders.

(17) [(14)] Place of business of the seller - general definition--An established outlet, office, or location operated by a seller for the purpose of selling taxable items to those other than employees, independent contractors, and natural persons affiliated with the seller and that receives three or more orders for taxable items during the calendar year. Places of business of the seller include, but are not limited to, call centers, showrooms, and clearance centers. [The term also includes any location operated by a seller at which the seller receives three or more orders for taxable items during a calendar year. For example, a home office at which three or more items are sold through an online auction website is a place of business.] A website, software application, or other method used to place an Internet order is not a place of business of the seller. Additional criteria for determining when a location is a place of business of the seller are provided in subsection (b)[(e)] of this section for [administrative offices;] distribution centers, manufacturing plants, storage yards, warehouses and similar facilities; kiosks; and purchasing offices. An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business, is not a "place of business of the retailer" if the comptroller determines that the outlet, office, facility, or location functions or exists to avoid the tax legally due under this chapter or exists solely to rebate a portion of the tax imposed by this chapter to the contracting business. An outlet, office, facility, or location does not exist to avoid the tax legally due under this chapter or solely to rebate a portion of the tax imposed by this chapter if the outlet, office, facility, or location provides significant business services, beyond processing invoices, to the contracting business, including logistics management, purchasing, inventory control, or other vital business services.

(18) [(15)] Purchasing office--An outlet, office, facility, or any location that contracts with a retail or commercial business to process for that business invoices, purchase orders, bills of lading, or other equivalent records onto which sales tax is added, including an office operated for the purpose of buying and selling taxable goods to be used or consumed by the retail or commercial business.

(19) Remote Seller--As defined in §3.286 of this title, remote seller is a seller engaged in business in this state whose only activity in the state is:

(A) engaging in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items; or

(B) soliciting orders for taxable items by mail or through other media including the Internet or other media that may be developed in the future.

(20) [(16)] Seller--This term has the meaning given in §3.286 of this title and also refers to any agent or employee of the seller.

(21) [(17)] Special purpose district--A local governmental entity authorized by the Texas legislature for a specific purpose, such as crime control, a local library, emergency services, county health services, or a county landfill and criminal detention center.

(22) [(18)] Storage--This term has the meaning given in §3.346 of this title (relating to Use Tax).

(23) [(19)] Temporary place of business of the seller--A location operated by a seller for a limited period of time for the purpose of selling and receiving orders for taxable items and where the seller has inventory available for immediate delivery to a purchaser. For example, a person who rents a booth at a weekend craft fair or art show to sell and take orders for jewelry, or a person who maintains a facility at a job site to rent tools and equipment to a contractor during the construction of real property, has established a temporary place of business. A temporary place of business of the seller includes a sale outside of a distribution center, manufacturing plant, storage yard, warehouse, or similar facility of the seller in a parking lot or similar space sharing the same physical address as the facility but not within the walls of the facility.

(24) [(20)] Transit authority--A metropolitan rapid transit authority (MTA), advanced transportation district (ATD), regional or subregional transportation authority (RTA), city transit department (CTD), county transit authority (CTA), regional mobility authority (RMA) or coordinated county transportation authority created under Transportation Code, Chapters 370, 451, 452, 453, 457, or 460.

(25) [(21)] Traveling salesperson--A seller, or an agent or employee of a seller, who visits potential purchasers in person to solicit sales, and who does not carry inventory ready for immediate sale, but who may carry samples or perform demonstrations of items for sale.

(26) [(22)] Two percent cap--A reference to the general rule that, except as otherwise provided by Texas law and as explained in this section, a seller cannot collect, and a purchaser is not obligated to pay, more than 2.0% of the sales price of a taxable item in total local sales and use taxes for all local taxing jurisdictions

(27) [(23)] Use--This term has the meaning given in §3.346 of this title.

(28) [(24)] Use tax--A tax imposed on the storage, use or other consumption of a taxable item in this state.

(b) Place of business of the seller - special definitions. In addition to the general definition of the term "place of business of the seller" in subsection (a)(17) of this section, the following rules apply.

(1) Distribution centers, manufacturing plants, storage yards, warehouses, and similar facilities.

(A) A distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller at which the seller receives three or more orders of taxable items during a calendar year from persons other than employees, independent contractors, and natural persons affiliated with the seller.

(B) If a location that is a place of business of the seller, such as a sales office, is in the same building as a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the entire facility is a place of business of the seller.

(2) Kiosks. A kiosk is not a place of business of the seller for the purpose of determining where a sale is consummated for local

tax purposes. A seller who owns or operates a kiosk in Texas is, however, engaged in business in this state as provided in §3.286 of this title.

(3) Purchasing offices.

(A) A purchasing office is not a place of business of the seller if the purchasing office exists solely to rebate a portion of the local sales and use tax imposed by Tax Code, Chapter 321 or 323 to a business with which it contracts; or if the purchasing office functions or exists to avoid the tax legally due under Tax Code, Chapter 321 or 323. A purchasing office does not exist solely to rebate a portion of the local sales and use tax or to avoid the tax legally due under Tax Code, Chapter 321 or 323 if the purchasing office provides significant business services to the contracting business beyond processing invoices, including logistics management, purchasing, inventory control, or other vital business services.

(B) In making a determination under subparagraph (A) of this paragraph, as to whether a purchasing office provides significant business services to the contracting business beyond processing invoices, the comptroller will compare the total value of the other business services to the value of processing invoices. If the total value of the other business services, including logistics management, purchasing, inventory control, or other vital business services, is less than the value of the service to process invoices, then the purchasing office will be presumed not to be a place of business of the seller.

(C) If the comptroller determines that a purchasing office is not a place of business of the seller, the sale of any taxable item is deemed to be consummated at the place of business of the seller from whom the purchasing office purchased the taxable item for resale and local sales and use taxes are due according to the following rules.

(i) When taxable items are purchased from a Texas seller, local sales taxes are due based on the location of the seller's place of business where the sale is deemed to be consummated, as determined in accordance with subsection (c) of this section.

(ii) When the sale of a taxable item is deemed to be consummated at a location outside of this state, local use tax is due based on the location where the items are first stored, used or consumed by the entity that contracted with the purchasing office in accordance with subsection (d) of this section.

(c) Local sales tax. Determining the local taxing jurisdictions to which sales tax is due; consummation of sale.

(1) General sales tax rules applied to specific situations. Except for the special rules applicable to remotes sellers in subsection (i)(3) of this section, direct payment permit purchases in subsection (j) of this section, and certain taxable items, including taxable items sold by a marketplace provider, as provided in subsection (k) of this section, each sale of a taxable item is consummated at the location indicated by the provisions of this subsection. The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in this state, regardless of whether they have no place of business in Texas, a single place of business in Texas, or multiple places of business in the state.

(A) Order placed in person at a seller's place of business in Texas. Except as described in subparagraph (F) of this paragraph and paragraph (6) of this subsection, for an order placed in person by a purchaser for a taxable item at a seller's place of business in Texas, including at a temporary place of business of the seller, the sale of that item is consummated at that place of business of the seller, regardless of the location where the order is fulfilled. Orders taken by traveling salespersons are not placed in person at the seller's place of business in Texas.

(B) Order received at a place of business of the seller in Texas, fulfilled at a location that is not a place of business of the seller.

(i) Except as provided in paragraph (6) of this subsection, when an order that is placed over the telephone, by any means other than in person, or through a traveling salesperson is received by the seller at a place of business of the seller in Texas, and the seller fulfills the order at a location that is not a place of business of the seller in Texas, such as a warehouse or distribution center, the sale is consummated at the place of business of the seller at which the order for the taxable item is received.

(ii) Orders taken by traveling salespersons operating out of a place of business of the seller in Texas are received by the seller at the place of business of the seller in Texas from which the traveling salesperson operates. Orders taken by traveling salespersons that are not operating out of a place of business of the seller in Texas are not received by the seller at a place of business of the seller in Texas. Orders taken by traveling salespersons are not received by the seller at the purchaser's location.

(C) Order fulfilled at a place of business of the seller in Texas. When an order is placed in person at a location that is not a place of business of the seller in this state, such as a kiosk, when an order is placed through a traveling salesperson, or when an order is placed over the telephone, through the Internet, or by any means other than in person, and the seller fulfills the order at a location that is a place of business of the seller in Texas, the sale is consummated at the place of business of the seller where the order is fulfilled.

(D) Order fulfilled within the state at a location that is not a place of business of the seller. When an order is received by a seller at any location other than a place of business of the seller in this state or by a traveling salesperson that does not operate out of a place of business of the seller in Texas, and the seller fulfills the order at a location in Texas that is not a place of business of the seller, then the sale is consummated at the location in Texas to which the order is shipped or delivered, or at which the purchaser of the item takes possession.

(E) Order received outside of the state, fulfilled outside of the state. When an order is received by a seller at a location outside of Texas, including orders received by a traveling salesperson operating from a location outside of Texas or by a remote seller, and the order is shipped or delivered into a local taxing jurisdiction from a location outside of the state, the sale is not consummated at a location in Texas. However, local use tax is due based upon the location in this state to which the item is shipped or delivered or at which the purchaser of the item takes possession as provided in subsection (d) of this section. Except as provided in subsection (i)(3) of this section, a remote seller required to collect state use tax under §3.286(b)(2) of this title must also collect local use tax based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession.

(F) Exception for qualifying economic development agreements entered into before January 1, 2009, pursuant to Tax Code, §321.203(c-4) - (c-5) or §323.203(c-4) - (c-5). This subparagraph is effective until September 1, 2024. If applicable, the local sales tax due on the sale of a taxable item is based on the location of the qualifying warehouse, which is a place of business of the seller, from which the item is shipped or delivered or at which the purchaser of the item takes possession.

(2) Local sales taxes are due to each local taxing jurisdiction in effect at the location where the sale is consummated. Local use tax may also be due if the total amount of local sales taxes due does not reach the two percent cap, and the item purchased is shipped or delivered to a location in one or more different local taxing jurisdictions, as provided in subsection (d) of this section.

(3) Multiple special purpose district taxes, multiple transit authority sales taxes, or a combination of the two may apply to a single transaction. If the sale of a taxable item is consummated at a location within the boundaries of multiple special purpose districts or transit authorities, local sales tax is owed to each of the jurisdictions in effect at that location. For example, a place of business of the seller located in the city of San Antonio is within the boundaries of both the San Antonio Advanced Transportation District and the San Antonio Metropolitan Transit Authority, and the seller is required to collect sales tax for both transit authorities. Similarly, a place of business of the seller in Flower Mound is located within the boundaries of two special purpose districts, the Flower Mound Crime Control District and the Flower Mound Fire Control District, and the seller is responsible for collecting sales tax for both special purpose districts.

(4) Drop shipments.

(A) When an order for a taxable item is received at a seller's place of business in Texas, or by a traveling salesperson operating out of a place of business in this state, and the item is drop-shipped directly to the purchaser from a third-party supplier, the sale is consummated at, and local sales tax is due based upon, the location of the place of business of the seller where the order is received.

(B) When an order for a taxable item is received by the seller at a location outside of Texas, or by a traveling salesperson operating from a location outside of this state, and the item is drop-shipped directly to the purchaser from a third-party supplier, the item is subject to use tax. See subsection (d) of this section concerning use tax.

(5) Itinerant vendors; vending machines.

(A) Itinerant vendors. Sales made by itinerant vendors are consummated at, and itinerant vendors must collect sales tax based upon, the location where the item is delivered or at which the purchaser of the item takes possession. Itinerant vendors do not have any responsibility to collect use tax.

(B) Vending machines. Sales of taxable items made from a vending machine are consummated at the location of the vending machine. See §3.293 of this title (relating to Food; Food Products; Meals; Food Service) for more information about vending machine sales.

(6) Internet orders. Subparagraphs (A) - (E) of this paragraph become effective April 1, 2020.

(A) General rule. Except as provided in this paragraph, Internet orders are not received at a place of business of the seller in Texas.

(B) Orders placed using the seller's device. When a purchaser places an order for a taxable item with a seller using the Internet on a computer or device of the seller at the seller's place of business in Texas, the sale is consummated at the place of business where the order is placed, regardless of where the order is fulfilled.

(C) Internet order fulfilled from a place of business of the seller in Texas. When a seller fulfills an Internet order at a location that is a place of business of the seller in Texas, the sale is consummated at the place of business of the seller where the order is fulfilled.

(D) Internet order fulfilled from a location in Texas that is not a place of business of the seller in Texas. When a seller fulfills an Internet order at a location in Texas that is not a place of business of the seller in Texas, the sale is consummated at the location in Texas to which the order is shipped or delivered, or at which the purchaser of the item takes possession.

(E) Internet order fulfilled from a location outside of the state. When an Internet order is shipped or delivered into a local taxing jurisdiction from a location outside of Texas, the sale is not consummated at a location in Texas. However, local use tax is due based upon the location in this state to which the item is shipped or delivered or at which the purchaser of the item takes possession as provided in subsection (d) of this section.

(F) Exception for certain economic development agreements. Subparagraphs (A) - (E) of this paragraph do not apply to sales of taxable items for Internet orders made by a seller who has entered into an economic development agreement pursuant to Local Government Code, Chapters 380 and 381 with a local taxing jurisdiction before September 1, 2019. This subparagraph is effective until December 31, 2022.

(d) Local use tax. The provisions addressing the imposition of state use tax in §3.346 of this title also apply to the imposition of local use tax. For example, consistent with §3.346(e) of this title, all taxable items that are shipped or delivered to a location in this state that is within the boundaries of a local taxing jurisdiction are presumed to have been purchased for use in that local taxing jurisdiction as well as presumed to have been purchased for use in the state.

(1) General rules.

(A) When local use taxes are due in addition to local sales taxes as provided by subsection (c) of this section, all applicable use taxes must be collected or accrued in the following order until the two percent cap is reached: city, county, special purpose district, and transit authority. If more than one special purpose district use tax is due, all such taxes are to be collected or accrued before any transit authority use tax is collected or accrued. See subparagraphs (D) and (E) of this paragraph.

(B) If a local use tax cannot be collected or accrued at its full rate without exceeding the two percent cap, the seller cannot collect it, or any portion of it, and the purchaser is not responsible for accruing it.

(C) If a seller collects a local sales tax on an item, or a purchaser accrues a local sales tax on an item, a use tax for the same type of jurisdiction is not due on the same item. For example, after a city sales tax has been collected or accrued for an item, no use tax is due to that same or a different city on that item, but use tax may be due to a county, special purpose district, or transit authority. Similarly, if one or more special purpose district sales taxes have been collected or accrued for an item, no special purpose district use tax is due on that item, and if one or more transit authority sales taxes have been collected or accrued for an item, no transit authority use tax is due on that item.

(D) Collection or accrual of use tax for multiple special purpose districts. If more than one special purpose district use tax is in effect at the location where use of an item occurs, the special purpose district taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all special purpose district taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the district with the earliest effective date would exceed the two percent cap, the tax for that district is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (C) of this paragraph, whether use tax is due for the district that next became effective.

(i) If the competing special purpose district taxes became effective on the same date, the special purpose district taxes are due in the order of the earliest date for which the election in which the

district residents authorized the imposition of sales and use tax by the district was held.

(ii) If the elections to impose the local taxes were held on the same date, the special purpose district taxes are due in the order of the earliest date for which the enabling legislation under which each district was created became effective.

(E) Collection or accrual of use tax for multiple transit authorities. If more than one transit authority use tax is in effect at the location where use of an item occurs, and the two percent cap has not been met, the transit authority taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all transit authority taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the authority with the earliest effective date would exceed the two percent cap, the tax for that authority is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (D) of this paragraph, whether use tax is due for the authority that next became effective.

(i) If the competing transit authorities became effective on the same date, the transit authority taxes are due in the order of the earliest date for which the election in which the authority residents authorized the imposition of sales and use tax by the authority was held.

(ii) If the elections to impose local taxes were held on the same date, the transit authority use taxes are due in the order of the earliest date for which the enabling legislation under which each authority was created became effective.

(2) General use tax rules applied to specific situations. The following fact patterns explain how local use tax is to be collected or accrued and remitted to the comptroller based on, and subject to, the general rules in paragraph (1) of this subsection.

(A) Sale consummated outside the state, item delivered from outside the state or from a location in Texas that is not operated by the seller - local use tax due. Except as provided in subsection (i)(3) of this section, if a sale is consummated outside of this state according to the provisions of subsection (c) of this section, and the item purchased is either shipped or delivered to a location in this state as designated by the purchaser from a location outside of the state, or if the order is drop shipped directly to the purchaser from a third-party supplier, local use tax is owed based upon the location in this state to which the order is shipped or delivered or at which the purchaser of the item takes possession. The seller is responsible for collecting the local use tax due on the sale. If the seller does not collect the local use taxes due on the sale, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller according to the provisions in paragraph (1) of this subsection. For example, if an order for a taxable item is received by a seller at a location outside of Texas, and the order is shipped to the purchaser from a location outside of the state, local use tax is due based upon the location to which the order is shipped or delivered or at which the purchaser of the item takes possession.

(B) Sale consummated in Texas outside a local taxing jurisdiction, item delivered into one or more local taxing jurisdictions - local use tax due. If a sale is consummated at a location in Texas that is outside of the boundaries of any local taxing jurisdiction according to the provisions of subsection (c) of this section, and the order is shipped or delivered to the purchaser at a location in this state that is within the boundaries of one or more local taxing jurisdictions, local use tax is due based on the location to which the items are shipped or delivered or at which the purchaser of the item takes possession. The seller is responsible for collecting the local use taxes due on the sale, regardless of the location of the seller in Texas. If the seller fails to collect any

local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller.

(C) Sale consummated in any local taxing jurisdictions imposing less than 2.0% in total local taxes - local sales taxes and use taxes due. If a sale is consummated at a location in Texas where the total local sales tax rate imposed by the taxing jurisdictions in effect at that location does not equal 2.0% according to the provisions of subsection (c) of this section, and the item is shipped or delivered to the purchaser at a location in this state that is inside the boundaries of a different local taxing jurisdiction, additional local use tax may be due based on the location to which the order is shipped or delivered or at which the purchaser of the item takes possession, subject to the two percent cap. The seller is responsible for collecting any additional local use taxes due on the sale, regardless of the location of the seller in Texas. See subsection (i) of this section. If the seller fails to collect the additional local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller.

(i) Example one - if an order is received in person at a place of business of the seller, such that the sale is consummated at the location where the order is received as provided under subsection (c)(1)(A) of this section, and the local sales tax due on the sale does not meet the two percent cap, additional local use taxes are due based on the location to which the order is shipped or delivered or at which the purchaser of the item takes possession, subject to the provisions in paragraph (1) of this subsection.

(ii) Example two - if a seller receives an order for a taxable item at a seller's place of business in Texas, and the seller ships or delivers the item from an out-of-state location to a location in this state as designated by the purchaser, local sales tax is due based upon the location of the place of business of the seller where the order is received. If the local sales tax due on the item does not meet the two percent cap, use taxes, subject to the provisions in paragraph (1) of this subsection, are due based upon the location where the items are shipped or delivered or at which the purchaser of the item takes possession.

(e) Effect of other law.

(1) Tax Code, Title 2, Subtitles A (General Provisions) and B (Enforcement and Collection), Tax Code, Chapter 141 (Multistate Tax Compact) and Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) apply to transactions involving local taxes. Related sections of this title and comptroller rulings shall also apply with respect to local taxes. This includes authorities such as court cases and federal law that affect whether an item is taxable or is excluded or exempt from taxation.

(2) Permits, exemption certificates, and resale certificates required by Tax Code, Chapter 151, shall also satisfy the requirements for collecting and remitting local taxes, unless otherwise indicated by this section or other sections of this title. For example, see subsection (n) of this section concerning prior contract exemptions.

(3) Any provisions in this section or other sections of this title related to a seller's responsibilities for collecting and remitting local taxes to the comptroller shall also apply to a purchaser if the seller does not collect local taxes that are due. The comptroller may proceed against the seller or purchaser for the local tax owed by either.

(f) Tax rates. Except as otherwise provided by law, no local governmental entity may adopt or increase a sales and use tax if, as a result of the adoption or increase of the tax, the combined rate of all sales and use taxes imposed by local taxing jurisdictions having territory in the local governmental entity would exceed 2.0% at any location within the boundaries of the local governmental entity's jurisdiction. The following are the local tax rates that may be adopted.

(1) Cities. Cities may impose sales and use tax at a rate of up to 2.0%.

(2) Counties. Counties may impose sales and use tax at rates ranging from 0.5% to 1.5%.

(3) Special purpose districts. Special purpose districts may impose sales and use tax at rates ranging from 0.125% to 2.0%.

(4) Transit authorities. Transit authorities may impose sales and use tax at rates ranging from 0.25% to 1.0%.

(g) Jurisdictional boundaries, combined areas, and city tax imposed through strategic partnership agreements.

(1) Jurisdictional boundaries.

(A) City boundaries. City taxing jurisdictional boundaries cannot overlap one another and a city cannot impose a sales and use tax in an area that is already within the jurisdiction of another city.

(B) County boundaries. County tax applies to all locations within that county.

(C) Special purpose district and transit authority boundaries. Special purpose districts and transit authorities may cross or share boundaries with other local taxing jurisdictions and may encompass, in whole or in part, other local taxing jurisdictions, including cities and counties. A geographic location or address in this state may lie within the boundaries of more than one special purpose district or more than one transit authority.

(D) Extraterritorial jurisdictions. Except as otherwise provided by paragraph (3) of this subsection concerning strategic partnership agreements and subsection (1)(5) of this section concerning the City of El Paso and Fort Bliss, city sales and use tax does not apply to taxable sales that are consummated outside the boundaries of the city, including sales made in a city's extraterritorial jurisdiction. However, an extraterritorial jurisdiction may lie within the boundaries of a special purpose district, transit authority, county, or any combination of the three, and the sales and use taxes for those jurisdictions would apply to those sales.

(2) Combined areas. A combined area is an area where the boundaries of a city overlap the boundaries of one or more other local taxing jurisdictions as a result of an annexation of additional territory by the city, and where, as the result of the imposition of the city tax in the area in addition to the local taxes imposed by the existing taxing jurisdictions, the combined local tax rate would exceed 2.0%. The comptroller shall make accommodations to maintain a 2.0% rate in any combined area by distributing the 2.0% tax revenue generated in these combined areas to the local taxing jurisdictions located in the combined areas as provided in Tax Code, §321.102 or Health and Safety Code, §775.0754. Combined areas are identified on the comptroller's website. Sellers engaged in transactions on which local sales or use taxes are due in a combined area, or persons who must self-accrue and remit tax directly to the comptroller, must use the combined area local code when reporting the tax rather than the codes for the individual city, county, special purpose districts, or transit authorities that make up the combined area.

(3) City tax imposed through strategic partnership agreements.

(A) The governing bodies of a district, as defined in Local Government Code, §43.0751, and a city may enter into a limited-purpose annexation agreement known as a strategic partnership agreement. Under this agreement, the city may impose sales and use tax within all or part of the boundaries of a district. Areas within a district that are annexed for this limited purpose are treated as though they

are within the boundaries of the city for purposes of city sales and use tax.

(B) Counties, transit authorities, and special purpose districts may not enter into strategic partnership agreements. Sales and use taxes imposed by those taxing jurisdictions do not apply in the limited-purpose annexed area as part of a strategic partnership agreement between a city and an authorized district. However, a county, special purpose district, or transit authority sales and use tax, or any combination of these three types of taxes, may apply at locations included in a strategic partnership agreement between a city and an authorized district if the tax is imposed in that area by the applicable jurisdiction as allowed under its own controlling authorities.

(C) Prior to September 1, 2011, the term "district" was defined in Local Government Code, §43.0751 as a municipal utility district or a water control and improvement district. The definition was amended effective September 1, 2011, to mean a conservation and reclamation district operating under Water Code, Chapter 49.

(h) Places of business of the seller and job sites crossed by local taxing jurisdiction boundaries.

(1) Places of business of the seller crossed by local taxing jurisdiction boundaries. If a place of business of the seller is crossed by one or more local taxing jurisdiction boundaries so that a portion of the place of business of the seller is located within a taxing jurisdiction and the remainder of the place of business of the seller lies outside of the taxing jurisdiction, tax is due to the local taxing jurisdictions in which the sales office is located. If there is no sales office, sales tax is due to the local taxing jurisdictions in which any cash registers are located.

(2) Job sites.

(A) Residential repair and remodeling; new construction of an improvement to realty. When a contractor is improving real property under a separated contract, and the job site is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on any separately stated charges for taxable items incorporated into the real property must be allocated to the local taxing jurisdictions based on the total square footage of the real property improvement located within each jurisdiction, including the square footage of any standalone structures that are part of the construction, repair, or remodeling project. For more information about tax due on materials used at residential and new construction job sites, refer to §3.291 of this title (relating to Contractors).

(B) Nonresidential real property repair and improvement. When taxable services are performed to repair, remodel, or restore nonresidential real property, including a pipeline, transmission line, or parking lot, that is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on the taxable services, including materials and any other charges connected to the services performed, must be allocated among the local taxing jurisdictions based upon the total mileage or square footage, as appropriate, of the repair, remodeling, or restoration project located in each jurisdiction. For more information about tax due on materials used at nonresidential real property repair and remodeling job sites, refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).

(i) Sellers' and purchasers' responsibilities for collecting or accruing local taxes.

(1) Sale consummated in Texas; seller responsible for collecting local sales taxes and applicable local use taxes. When a sale of a taxable item is consummated at a location in Texas as provided by subsection (c) of this section, the seller must collect each local sales tax in effect at the location. If the total rate of local sales tax due on the sale

does not reach the two percent cap, and the seller ships or delivers the item into another local taxing jurisdiction, then the seller is required to collect additional local use taxes due, if any, based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession, regardless of the location of the seller in Texas. For more information regarding local use taxes, refer to subsection (d) of this section.

(2) Out-of-state sale; seller engaged in business in Texas. Except as provided in paragraph (3) of this subsection, when a sale is not consummated in Texas, a seller who is engaged in business in this state is required to collect and remit local use taxes due, if any, on orders of taxable items shipped or delivered at the direction of the purchaser into a local taxing jurisdiction in this state based upon the location in this state to which the item is shipped or delivered or at which the purchaser of the item takes possession as provided in subsection (d) of this section.

(3) Local use tax rate for remote sellers.

(A) A remote seller required to collect and remit one or more local use taxes in connection with a sale of a taxable item must compute the amount using:

(i) the combined tax rate of all applicable local use taxes based on the location to which the item is shipped or delivered or at which the purchaser of the item takes possession; or

(ii) at the remote seller's election, the single local use tax rate published in the *Texas Register*.

(B) A remote seller that is storing tangible personal property in Texas to be used for fulfillment at a facility of a marketplace provider that has certified that it will assume the rights and duties of a seller with respect to the tangible personal property, as provided for in §3.286 of this title, may elect the single local use tax rate under subparagraph (A)(ii) of this paragraph.

(C) Notice to the comptroller of election and revocation of election.

(i) Before using the single local use tax rate, a remote seller must notify the comptroller of its election using a form prescribed by the comptroller. A remote seller may also notify the comptroller of the election on its use tax permit application form. The remote seller must use the single local use tax rate for all of its sales of taxable items until the election is revoked as provided in clause (ii) of this subparagraph.

(ii) A remote seller may revoke its election by filing a form prescribed by the comptroller. If the comptroller receives the notice by October 1, the revocation will be effective January 1 of the following year. If the comptroller receives the notice after October 1, the revocation will be effective January 1 of the year after the following year. For example, a remote seller must notify the comptroller by October 1, 2020, for the revocation to be effective January 1, 2021. If the comptroller receives the revocation on November 1, 2020, the revocation will be effective January 1, 2022.

(D) Single local use tax rate.

(i) The single local use tax rate in effect for the period beginning October 1, 2019, and ending December 31, 2019, is 1.75%.

(ii) The single local use tax rate in effect for the period beginning January 1, 2020, and ending December 31, 2020, is 1.75%.

(E) Annual publication of single local use tax rate. Before the beginning of a calendar year, the comptroller will publish no-

tion of the single local use tax rate in the *Texas Register* that will be in effect for that calendar year.

(F) Calculating the single local use tax rate. The single local use tax rate effective in a calendar year is equal to the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year. As soon as practicable after the end of a state fiscal year, the comptroller must determine the estimated average rate of local sales and use taxes imposed in this state during the preceding state fiscal year by:

(i) dividing the total amount of net local sales and use taxes remitted to the comptroller during the state fiscal year by the total amount of net state sales and use tax remitted to the comptroller during the state fiscal year;

(ii) multiplying the amount computed under clause (i) of this subparagraph by the rate provided in Tax Code, §151.051; and

(iii) rounding the amount computed under clause (ii) of this subparagraph to the nearest .0025.

(G) Direct refund. A purchaser may request a refund based on local use taxes paid in a calendar year for the difference between the single local use tax rate paid by the purchaser and the amount the purchaser would have paid based on the combined tax rate for all applicable local use taxes. Notwithstanding the refund requirements under §3.325(a)(1) of this title (relating to Refunds and Payments Under Protest), a non-permitted purchaser may request a refund directly from the comptroller for the tax paid in the previous calendar year, no earlier than January 1 of the following calendar year within the statute of limitation under Tax Code, 111.104 (Refunds).

(H) Marketplace providers. Notwithstanding subparagraph (A) of this paragraph, marketplace providers may not use the single local use tax rate and must compute the amount of local use tax to collect and remit using the combined tax rate of all applicable local use taxes.

(4) Purchaser responsible for accruing and remitting local taxes if seller fails to collect.

(A) If a seller does not collect the state sales tax, any applicable local sales taxes, or both, on a sale of a taxable item that is consummated in Texas, then the purchaser is responsible for filing a return and paying the tax. The local sales taxes due are based on the location in this state where the sale is consummated as provided in subsection (c) of this section.

(B) A purchaser who buys an item for use in Texas from a seller who does not collect the state use tax, any applicable local use taxes, or both, is responsible for filing a return and paying the tax. The local use taxes due are based on the location where the item is first stored, used, or consumed by the purchaser.

(C) For more information about how to report and pay use tax directly to the comptroller, see §3.286 of this title.

(5) Local tax is due on the sales price of a taxable item, as defined in Tax Code, §151.007, in the report period in which the taxable item is purchased or the period in which the taxable item is first stored, used, or otherwise consumed in a local taxing jurisdiction.

(6) A purchaser is not liable for additional local use tax if the purchaser pays local use tax using the rate elected by an eligible remote seller according to paragraph (3) of this subsection. The remote seller must be identified on the comptroller's website as electing to use the single local use tax rate. A purchaser must verify that the remote seller is listed on the comptroller's website. If the remote seller is not

listed on the comptroller's website, the purchaser will be liable for additional use tax due in accordance to paragraph (4) of this subsection.

~~[(b) Effect of other law.]~~

~~[(1) Tax Code, Title 2, Subtitles A (General Provisions) and B (Enforcement and Collection), Tax Code, Chapter 141 (Multi-state Tax Compact) and Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) apply to transactions involving local taxes. Related sections of this title and comptroller rulings shall also apply with respect to local taxes. This includes authorities such as court cases and federal law that affect whether an item is taxable or is excluded or exempt from taxation.]~~

~~[(2) Permits, exemption certificates, and resale certificates required by Tax Code, Chapter 151, shall also satisfy the requirements for collecting and remitting local taxes, unless otherwise indicated by this section or other sections of this title. For example, see subsection (n) of this section concerning prior contract exemptions.]~~

~~[(3) Any provisions in this section or other sections of this title related to a seller's responsibilities for collecting and remitting local taxes to the comptroller shall also apply to a purchaser if the seller does not collect local taxes that are due. The comptroller may proceed against the seller or purchaser for the local tax owed by either.]~~

~~[(c) Tax rates. Except as otherwise provided by law, no local governmental entity may adopt or increase a sales and use tax if, as a result of the adoption or increase of the tax, the combined rate of all sales and use taxes imposed by local taxing jurisdictions having territory in the local governmental entity would exceed 2.0% at any location within the boundaries of the local governmental entity's jurisdiction. The following are the local tax rates that may be adopted:]~~

~~[(1) Cities. Cities may impose sales and use tax at a rate of up to 2.0%.]~~

~~[(2) Counties. Counties may impose sales and use tax at rates ranging from 0.5% to 1.5%.]~~

~~[(3) Special purpose districts. Special purpose districts may impose sales and use tax at rates ranging from 0.125% to 2.0%.]~~

~~[(4) Transit authorities. Transit authorities may impose sales and use tax at rates ranging from 0.25% to 1.0%.]~~

~~[(d) Jurisdictional boundaries, combined areas, and city tax imposed through strategic partnership agreements.]~~

~~[(1) Jurisdictional boundaries.]~~

~~[(A) City boundaries. City taxing jurisdictional boundaries cannot overlap one another and a city cannot impose a sales and use tax in an area that is already within the jurisdiction of another city.]~~

~~[(B) County boundaries. County tax applies to all locations within that county.]~~

~~[(C) Special purpose district and transit authority boundaries. Special purpose districts and transit authorities may cross or share boundaries with other local taxing jurisdictions and may encompass, in whole or in part, other local taxing jurisdictions, including cities and counties. A geographic location or address in this state may lie within the boundaries of more than one special purpose district or more than one transit authority.]~~

~~[(D) Extraterritorial jurisdictions. Except as otherwise provided by paragraph (3) of this subsection concerning strategic partnership agreements and subsection (1)(5) of this section concerning the City of El Paso and Fort Bliss, city sales and use tax does not apply to taxable sales that are consummated outside the boundaries of the city, including sales made in a city's extraterritorial jurisdiction. However,~~

an extraterritorial jurisdiction may lie within the boundaries of a special purpose district, transit authority, county, or any combination of the three, and the sales and use taxes for those jurisdictions would apply to those sales.]

~~[(2) Combined areas. A combined area is an area where the boundaries of a city overlap the boundaries of one or more other local taxing jurisdictions as a result of an annexation of additional territory by the city, and where, as the result of the imposition of the city tax in the area in addition to the local taxes imposed by the existing taxing jurisdictions, the combined local tax rate would exceed 2.0%. The comptroller shall make accommodations to maintain a 2.0% rate in any combined area. Sellers engaged in transactions on which local sales or use taxes are due in a combined area, or persons who must self-accrete and remit tax directly to the comptroller, must use the combined area local code when reporting the tax rather than the codes for the individual city, county, special purpose districts, or transit authorities that make up the combined area. The comptroller shall distribute the tax revenue generated in these combined areas to the local taxing jurisdictions located in the combined areas as provided in Tax Code, §321.102 or Health and Safety Code, §775.0754. Combined areas are identified on the comptroller's website.]~~

~~[(3) City tax imposed through strategic partnership agreements.]~~

~~[(A) The governing bodies of a district, as defined in Local Government Code, §43.0751, and a city may enter into a limited-purpose annexation agreement known as a strategic partnership agreement. Under this agreement, the city may impose sales and use tax within all or part of the boundaries of a district. Areas within a district that are annexed for this limited purpose are treated as though they are within the boundaries of the city for purposes of city sales and use tax.]~~

~~[(B) Counties, transit authorities, and special purpose districts may not enter into strategic partnership agreements. Sales and use taxes imposed by those taxing jurisdictions do not apply in the limited-purpose annexed area as part of a strategic partnership agreement between a city and an authorized district. However, a county, special purpose district, or transit authority sales and use tax, or any combination of these three types of taxes, may apply at locations included in a strategic partnership agreement between a city and an authorized district if the tax is imposed in that area by the applicable jurisdiction as allowed under its own controlling authorities.]~~

~~[(C) Prior to September 1, 2011, the term "district" was defined in Local Government Code, §43.0751 as a municipal utility district or a water control and improvement district. The definition was amended effective September 1, 2011, to mean a conservation and reclamation district operating under Water Code, Chapter 49.]~~

~~[(e) Place of business - special definitions. In addition to the general definition of the term "place of business" in subsection (a)(14) of this section, the following rules apply.]~~

~~[(1) Administrative offices supporting traveling salespersons. Any outlet, office, or location operated by a seller that serves as a base of operations for a traveling salesperson or that provides administrative support to a traveling salesperson is a place of business.]~~

~~[(2) Distribution centers, manufacturing plants, storage yards, warehouses, and similar facilities.]~~

~~[(A) A distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller at which the seller receives three or more orders for taxable items during the calendar year is a place of business.]~~

[(B) If a salesperson who receives three or more orders for taxable items within a calendar year is assigned to work from, or to work at, a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the facility is a place of business.]

[(C) If a location that is a place of business of the seller, such as a sales office, is in the same building as a distribution center, manufacturing plant, storage yard, warehouse, or similar facility operated by a seller, then the entire facility is a place of business of the seller.]

[(3) Kiosks. A kiosk is not a place of business for the purpose of determining where a sale is consummated for local tax purposes. A seller who owns or operates a kiosk in Texas is, however, engaged in business in this state as provided in §3.286 of this title.]

[(4) Purchasing offices.]

[(A) A purchasing office is not a place of business if the purchasing office exists solely to rebate a portion of the local sales and use tax imposed by Tax Code, Chapter 321 or 323 to a business with which it contracts; or if the purchasing office functions or exists to avoid the tax legally due under Tax Code, Chapter 321 or 323. A purchasing office does not exist solely to rebate a portion of the local sales and use tax or to avoid the tax legally due under Tax Code, Chapter 321 or 323 if the purchasing office provides significant business services; beyond processing invoices; to the contracting business; including logistics management, purchasing, inventory control, or other vital business services.]

[(B) When the comptroller determines that a purchasing office is not a place of business, the sale of any taxable item is deemed to be consummated at the place of business of the seller from whom the purchasing office purchased the taxable item for resale and local sales and use taxes are due according to the following rules:]

[(i) When taxable items are purchased from a Texas seller, local sales taxes are due based on the location of the seller's place of business where the sale is deemed to be consummated, as determined in accordance with subsection (h) of this section.]

[(ii) When the sale of a taxable item is deemed to be consummated at a location outside of this state, local use tax is due based on the location where the items are first stored, used or consumed by the entity that contracted with the purchasing office in accordance with subsection (i) of this section.]

[(C) In making a determination under subparagraph (A) of this paragraph, as to whether a purchasing office provides significant business services to the contracting business, the comptroller will look to the books and records of the purchasing office to determine whether the total value of the business services provided to the contracting business equals or exceeds the total value of processing invoices. If the total value of the business services provided, including logistics management, purchasing, inventory control, or other vital business services, is less than the total value of the service to process invoices, then the purchasing office will be presumed not to be a place of business of the seller.]

[(f) Places of business and job sites crossed by local taxing jurisdiction boundaries.]

[(1) Places of business crossed by local taxing jurisdiction boundaries. If a place of business is crossed by one or more local taxing jurisdiction boundaries so that a portion of the place of business is located within a taxing jurisdiction and the remainder of the place of business lies outside of the taxing jurisdiction, tax is due to the local taxing jurisdictions in which the sales office is located. If there is no

sales office, sales tax is due to the local taxing jurisdictions in which any cash registers are located.]

[(2) Job sites.]

[(A) Residential repair and remodeling; new construction of an improvement to realty. When a contractor is improving real property under a separated contract, and the job site is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on any separately stated charges for taxable items incorporated into the real property must be allocated to the local taxing jurisdictions based on the total square footage of the real property improvement located within each jurisdiction, including the square footage of any standalone structures that are part of the construction, repair, or remodeling project. For more information about tax due on materials used at residential and new construction job sites, refer to §3.294 of this title (relating to Contractors).]

[(B) Nonresidential real property repair and improvement. When taxable services are performed to repair, remodel, or restore nonresidential real property, including a pipeline, transmission line, or parking lot, that is crossed by the boundaries of one or more local taxing jurisdictions, the local taxes due on the taxable services, including materials and any other charges connected to the services performed, must be allocated among the local taxing jurisdictions based upon the total mileage or square footage, as appropriate, of the repair, remodeling, or restoration project located in each jurisdiction. For more information about tax due on materials used at nonresidential real property repair and remodeling job sites, refer to §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance).]

[(g) Sellers' and purchasers' responsibilities for collecting or accruing local taxes.]

[(1) Sale consummated in Texas; seller responsible for collecting local sales taxes and applicable local use taxes. When a sale of a taxable item is consummated at a location in Texas as provided by subsection (h) of this section, the seller must collect each local sales tax in effect at the location except as provided in paragraph (3) of this subsection. If the total rate of local sales tax due on the sale does not reach the two percent cap, and the seller ships or delivers the item into another local taxing jurisdiction in which the seller is engaged in business, then the seller is required to collect additional local use taxes due, if any, based on the location to which the item is shipped or delivered. For more information regarding local use taxes, refer to subsection (i) of this section.]

[(2) Out-of-state sale; seller engaged in business in Texas. A seller who is engaged in business in this state is required to collect and remit local use taxes due, if any, on orders of taxable items shipped or delivered at the direction of the purchaser into a local taxing jurisdiction in this state in which the seller is engaged in business.]

[(3) A seller is only required to collect local sales or use taxes for a local taxing jurisdiction in which the seller is engaged in business.]

[(4) Purchaser responsible for accruing and remitting local taxes if seller fails to collect.]

[(A) If a seller does not collect the state sales tax, any applicable local sales taxes, or both on a sale of a taxable item that is consummated in Texas, then the purchaser is responsible for filing a return and paying the tax. The local sales taxes due are based on the location in this state where the sale is consummated as provided in subsection (h) of this section.]

{(B) A purchaser who buys an item for use in Texas from a seller who does not collect the state use tax, any applicable local use taxes, or both, is responsible for filing a return and paying the tax. The local use taxes due are based on the location where the item is first stored, used, or consumed by the purchaser.}

{(C) For more information about how to report and pay use tax directly to the comptroller, see §3.286 of this title.}

{(5) Local tax is due on the sales price of a taxable item, as defined in Tax Code, §151.007, in the report period in which the taxable item is purchased or the period in which the taxable item is first stored, used, or otherwise consumed in a local taxing jurisdiction.}

{(h) Local sales tax. Determining the local taxing jurisdictions to which sales tax is due; consummation of sale.}

{(1) General rule. Except for the special rules applicable to direct payment permit purchases and certain taxable items as provided in subsections (j) and (k) of this section, each sale of a taxable item is consummated at the location indicated by the provisions of this subsection. Local sales taxes are due to each local taxing jurisdiction in effect at the location where the sale is consummated. Local use tax may also be due if the total amount of local sales taxes due does not reach the two percent cap, and the item purchased is shipped or delivered to a location in one or more different local taxing jurisdictions, as provided in subsection (i) of this section.}

{(2) Multiple special purpose district taxes, multiple transit authority sales taxes, or a combination of the two may apply to a single transaction. If the sale of a taxable item is consummated at a location within the boundaries of multiple special purpose districts or transit authorities, local sales tax is owed to each of the jurisdictions in effect at that location. For example, a place of business located in the city of San Antonio is within the boundaries of both the San Antonio Advanced Transportation District and the San Antonio Metropolitan Transit Authority, and the seller is required to collect sales tax for both transit authorities. Similarly, a place of business in Flower Mound is located within the boundaries of two special purpose districts, the Flower Mound Crime Control District and the Flower Mound Fire Control District, and the seller is responsible for collecting sales tax for both special purpose districts.}

{(3) Consummation of sale. The following rules, taken from Tax Code, §321.203 and §323.203, apply to all sellers engaged in business in this state, regardless of whether they have a place of business in Texas or multiple places of business in the state.}

{(A) Order placed in person at a seller's place of business in Texas. When a purchaser places an order for a taxable item in person at a seller's place of business in Texas, the sale of that item is consummated at that place of business, regardless of the location where the order is fulfilled, except in the limited circumstances described in subparagraph (F) of this paragraph, concerning qualifying economic development agreements.}

{(B) Order received at a place of business in Texas, fulfilled at a location that is not a place of business. When an order that is placed over the telephone, through the Internet, or by any means other than in person is received by the seller at a place of business in Texas, and the seller fulfills the order at a location that is not a place of business of the seller in Texas, such as a warehouse or distribution center, the sale is consummated at the place of business at which the order for the taxable item is received.}

{(C) Order fulfilled at a place of business in Texas. When an order is placed in person at a location that is not a place of business of the seller in this state, such as a kiosk, or when an order is placed over the telephone, through the Internet, or by any means

other than in person, and the seller fulfills the order at a location that is a place of business in Texas, the sale is consummated at the place of business where the order is fulfilled.}

{(D) Order fulfilled within the state at a location that is not a place of business. When an order is received by a seller at any location other than a place of business of the seller in this state, and the seller fulfills the order at a location in Texas that is not a place of business of the seller, then the sale is consummated at the location in Texas to which the order is shipped or delivered, or the location where it is transferred to the purchaser.}

{(E) Order received outside of the state, fulfilled outside of the state. When an order is received by a seller at a location outside of Texas, and the order is shipped or delivered into a local taxing jurisdiction from a location outside of the state, the sale is not consummated at a location in Texas. However, local use tax is due based upon the location in this state to which the item is shipped or delivered or at which possession of the item is taken by the purchaser as provided in subsection (i) of this section.}

{(F) Exception for qualifying economic development agreements entered into before January 1, 2009, pursuant to Tax Code, §321.203(e-4) - (e-5) or §323.203(e-4) - (e-5). This subparagraph is effective until September 1, 2024. If applicable, the local sales tax due on the sale of a taxable item is based on the location of the qualifying warehouse, which is a place of business of the seller, from which the item is shipped or delivered or at which the purchaser takes possession of the item.}

{(4) Orders received by traveling salespersons. Orders taken by traveling salespersons are received by the seller at the administrative office or other place of business from which the traveling salesperson operates, and such sales are consummated at the location indicated in paragraph (3) of this subsection. For example, if a traveling salesperson who operates out of a place of business of a seller in Texas takes an order for a taxable item, and the order is fulfilled at a location that is not a place of business of the seller in this state, the sale is consummated at the place of business from which the salesperson operates, in accordance with paragraph (3)(B) of this subsection. Similarly, if a traveling salesperson takes an order for a taxable item, and the order is fulfilled at a place of business of the seller in this state, the sale is consummated at the location of the place of business where the order is fulfilled, in accordance with paragraph (3)(C) of this subsection.}

{(5) Drop shipments.}

{(A) When an order for a taxable item is received at a seller's place of business in Texas, or by a traveling salesperson operating out of a place of business in this state, and the item is drop-shipped directly to the purchaser from a third-party supplier, the sale is consummated at, and local sales tax is due based upon, the location of the place of business where the order is received. When an order for a taxable item is received by a seller at one location, but shipped by the seller to the purchaser from a different location, the sale is consummated at, and local sales tax is due based upon, the location designated in paragraph (3) of this subsection. If the local sales taxes due based on the location of the seller's place of business at which the sale is consummated equal less than 2.0%, additional local use tax may be due based upon the location in this state to which the purchased item is shipped or delivered or at which possession of the item is taken by the purchaser as provided in subsection (i) of this section.}

{(B) When an order for a taxable item is received by the seller at a location outside of Texas, or by a traveling salesperson operating from a location outside of this state, and the item is drop-shipped directly to the purchaser from a third-party supplier, the item

is subject to use tax. See subsection (i) of this section concerning use tax.]

[(6) Itinerant vendors; vending machines; temporary places of business.]

[(A) Itinerant vendors. Sales made by itinerant vendors are consummated at, and itinerant vendors must collect sales tax based upon; the location where the item is delivered or where the purchaser takes possession of the item. Itinerant vendors do not have any responsibility to collect use tax.]

[(B) Vending machines. Sales of taxable items made from a vending machine are consummated at the location of the vending machine. See §3.293 of this title (relating to Food; Food Products; Meals; Food Service) for more information about vending machine sales.]

[(C) Temporary places of business.]

[(i) Item transferred to purchaser at time of sale. When a seller operates a temporary place of business, and items purchased are transferred to the purchasers at the time of sale, the sales are consummated at, and local sales tax is due based upon; the location of the temporary place of business.]

[(ii) Order accepted at temporary place of business prior to June 19, 2009. If a seller received an order at a temporary place of business prior to June 19, 2009, and the order was fulfilled at another place of business of the seller in this state, the sale was consummated at, and local sales taxes are due based upon; the location of the place of business where the order was fulfilled and not the temporary location where the order was received.]

[(iii) Order accepted at temporary place of business on or after June 19, 2009. When a seller receives an order in person at a temporary place of business and the order is fulfilled at another location, the sale is consummated at, and local sales taxes are due based upon; the location of the temporary place of business where the order was received.]

[(i) Use tax. The provisions addressing the imposition of state use tax in §3.346 of this title also apply to the imposition of local use tax. For example, consistent with §3.346(e) of this title, all taxable items that are shipped or delivered to a location in this state that is within the boundaries of a local taxing jurisdiction are presumed to have been purchased for use in that local taxing jurisdiction as well as presumed to have been purchased for use in the state.]

[(1) General rules.]

[(A) When local use taxes are due in addition to local sales taxes as provided by subsection (h) of this section, all applicable use taxes must be collected or accrued in the following order until the two percent cap is reached: city, county, special purpose district, and transit authority. If more than one special purpose district use tax is due, all such taxes are to be collected or accrued before any transit authority use tax is collected or accrued. See subparagraphs (D) and (E) of this paragraph.]

[(B) If a local use tax cannot be collected or accrued at its full rate without exceeding the two percent cap, the seller cannot collect it, or any portion of it, and the purchaser is not responsible for accruing it.]

[(C) If a seller collects a local sales tax on an item, or a purchaser accrues a local sales tax on an item, a use tax for the same type of jurisdiction is not due on the same item. For example, once a city sales tax has been collected or accrued for an item, no use tax is due to that same or a different city on that item, but use tax may be due

to a county, special purpose district, or transit authority. Similarly, if one or more special purpose district sales taxes have been collected or accrued for an item, no special purpose district use tax is due on that item, and if one or more transit authority sales taxes have been collected or accrued for an item, no transit authority use tax is due on that item.]

[(D) Collection or accrual of use tax for multiple special purpose districts. If more than one special purpose district use tax is in effect at the location where use of an item occurs, the special purpose district taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all special purpose district taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the district with the earliest effective date would exceed the two percent cap, the tax for that district is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (C) of this paragraph, whether use tax is due for the district that next became effective.]

[(i) If the competing special purpose districts became effective on the same date, the special purpose district taxes are due in the order of the earliest date for which the election in which the district residents authorized the imposition of sales and use tax by the district was held.]

[(ii) If the elections to impose the local taxes were held on the same date, the special purpose district taxes are due in the order of the earliest date for which the enabling legislation under which each district was created became effective.]

[(E) Collection or accrual of use tax for multiple transit authorities. If more than one transit authority use tax is in effect at the location where use of an item occurs, and the two percent cap has not been met, the transit authority taxes are due in the order of their effective dates, beginning with the earliest effective date, until the two percent cap is met. The effective dates of all transit authority taxes are available on the comptroller's website. However, if the collection or accrual of use tax for the authority with the earliest effective date would exceed the two percent cap, the tax for that authority is not due and the seller or purchaser should determine, following the criteria in subparagraphs (A) - (D) of this paragraph, whether use tax is due for the authority that next became effective.]

[(i) If the competing transit authorities became effective on the same date, the transit authority taxes are due in the order of the earliest date for which the election in which the authority residents authorized the imposition of sales and use tax by the authority was held.]

[(ii) If the elections to impose local taxes were held on the same date, the transit authority use taxes are due in the order of the earliest date for which the enabling legislation under which each authority was created became effective.]

[(2) General use tax rules applied to specific situations. The following fact patterns explain how local use tax is to be collected or accrued and remitted to the comptroller based on, and subject to, the general rules in paragraph (1) of this subsection.]

[(A) Sale consummated outside the state, item delivered from outside the state or from a location in Texas that is not operated by the seller - local use tax due. If a sale is consummated outside of this state according to the provisions of subsection (h) of this section, and the item purchased is either shipped or delivered to a location in this state as designated by the purchaser from a location outside of the state, or if the order is drop shipped directly to the purchaser from a third-party supplier, local use tax is owed based upon the location in this state to which the order is shipped or delivered. If the seller is en-

gaged in business in the local taxing jurisdiction into which the order is shipped or delivered, the seller is responsible for collecting the local use tax due on the sale. If the seller does not collect the local use taxes due on the sale, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller according to the provisions in paragraph (1) of this subsection. For example, if an order for a taxable item is received by a seller at a location outside of Texas, and the order is shipped to the purchaser from a location outside of the state, local use tax is due based upon the location to which the order is shipped or delivered.]

~~[(B) Sale consummated in Texas outside a local taxing jurisdiction, item delivered into one or more local taxing jurisdictions - local use tax due. If a sale is consummated at a location in Texas that is outside of the boundaries of any local taxing jurisdiction according to the provisions of subsection (h) of this section, and the order is shipped or delivered to the purchaser at a location in this state that is within the boundaries of one or more local taxing jurisdictions, local use tax is due based on the location to which the items are shipped or delivered. If the seller is engaged in business in the local taxing jurisdiction where the items are shipped or delivered, the seller is responsible for collecting the local use taxes due. If the seller fails to collect any local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller. For example, if a seller uses its own delivery vehicle to transport a taxable item from a place of business that is outside the boundaries of a local taxing jurisdiction to a delivery location designated by a purchaser that is inside the boundaries of a local taxing jurisdiction, the seller is responsible for collecting the local use taxes due based on the location to which the items are delivered.]~~

~~[(C) Sale consummated in any local taxing jurisdictions imposing less than 2.0% in total local taxes - local sales taxes, and possibly use taxes, due. If a sale is consummated at a location in Texas where the total local sales tax rate imposed by the taxing jurisdictions in effect at that location does not equal or exceed 2.0% according to the provisions of subsection (h) of this section, and the item is shipped or delivered to the purchaser at a location in this state that is inside the boundaries of a different local taxing jurisdiction, additional local use tax may be due based on the location to which the order is shipped or delivered, subject to the two percent cap. If the seller is engaged in business in the local taxing jurisdiction into which the order is shipped or delivered, the seller is responsible for collecting any additional local use taxes due. See subsection (g) of this section. If the seller fails to collect the additional local use taxes due, the purchaser is responsible for accruing such taxes and remitting them directly to the comptroller. For example, if an order is received in person at a place of business of the seller, such that the sale is consummated at the location where the order is received as provided under subsection (h)(3)(A) of this section, and the local sales tax due on the sale does not meet the two percent cap, additional local use taxes may be due based on the location to which the order is shipped or delivered, subject to the provisions in paragraph (1) of this subsection. Or, if a purchaser places an order for a taxable item at a seller's place of business in Texas, and the seller ships or delivers the item from an out-of-state location to a location in this state as designated by the purchaser, local sales tax is due based upon the location of the place of business where the order is received. If the local sales tax due on the item does not meet the two percent cap, use tax, subject to the provisions in paragraph (1) of this subsection, is due based upon the location where the items are shipped or delivered.]~~

(j) Items purchased under a direct payment permit.

(1) When taxable items are purchased under a direct payment permit, local use tax is due based upon the location where the permit holder first stores the taxable items, except that if the taxable items are not stored, then local use tax is due based upon the location

where the taxable items are first used or otherwise consumed by the permit holder.

(2) If, in a local taxing jurisdiction, storage facilities contain taxable items purchased under a direct payment exemption certificate and at the time of storage it is not known whether the taxable items will be used in Texas, then the taxpayer may elect to report the use tax either when the taxable items are first stored in Texas or are first removed from inventory for use in Texas, as long as use tax is reported in a consistent manner. See also §3.288(i) of this title (relating to Direct Payment Procedures and Qualifications) and §3.346(g) of this title.

(3) If local use tax is paid on stored items that are subsequently removed from Texas before they are used, the tax may be recovered in accordance with the refund and credit provisions of §3.325 of this title [(relating to Refunds and Payments Under Protest)] and §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(k) Special rules for certain taxable goods and services. Sales of the following taxable goods and services are consummated at, and local tax is due based upon, the location indicated in this subsection.

(1) Amusement services. Local tax is due based upon the location where the performance or event occurs. For more information on amusement services, refer to §3.298 of this title (relating to Amusement Services).

(2) Cable services. When a service provider uses a cable system to provide cable television or bundled cable services to customers, local tax is due as provided for in §3.313 of this title. When a service provider uses a satellite system to provide cable services to customers, no local tax is due on the service in accordance with the Telecommunications Act of 1996, §602.

(3) Florists. Local sales tax is due on all taxable items sold by a florist based upon the location where the order is received, regardless of where or by whom delivery is made. Local use tax is not due on deliveries of taxable items sold by florists. For example, if the place of business of the florist where an order is taken is not within the boundaries of any local taxing jurisdiction, no local sales tax is due on the item and no local use tax is due regardless of the location of delivery. If a Texas florist delivers an order in a local taxing jurisdiction at the instruction of an unrelated florist, and if the unrelated florist did not take the order within the boundaries of a local taxing jurisdiction, local use tax is not due on the delivery. For more information about florists' sales and use tax obligations, refer to §3.307 of this title (relating to Florists).

(4) Landline telecommunications services. Local taxes due on landline telecommunications services are based upon the location of the device from which the call or other transmission originates. If the seller cannot determine where the call or transmission originates, local taxes due are based on the address to which the service is billed. For more information, refer to §3.344 of this title (relating to Telecommunications Services).

(5) Marketplace provider sales. Local taxes are due on sales of taxable items through a marketplace provider based on the location in this state to which the item is shipped or delivered or at which the purchaser takes possession. For more information, refer to §3.286 of this title.

(6) ~~[(5)]~~ Mobile telecommunications services. Local taxes due on mobile telecommunications services are based upon the location of the customer's place of primary use as defined in §3.344(a)(8) of this title, and local taxes are to be collected as indicated in §3.344(h) of this title.

(7) [(6)] Motor vehicle parking and storage. Local taxes are due based on the location of the space or facility where the vehicle is parked. For more information, refer to §3.315 of this title (relating to Motor Vehicle Parking and Storage).

(8) [(7)] Natural gas and electricity. Any local city and special purpose taxes due are based upon the location where the natural gas or electricity is delivered to the purchaser. As explained in subsection (1)(1) of this section, residential use of natural gas and electricity is exempt from all county sales and use taxes and all transit authority sales and use taxes, most special purpose district sales and use taxes, and many city sales and use taxes. A list of the cities and special purpose districts that do impose, and those that are eligible to impose, local sales and use tax on residential use of natural gas and electricity is available on the comptroller's website. For more information, also refer to §3.295 of this title (relating to Natural Gas and Electricity).

(9) [(8)] Nonresidential real property repair and remodeling services. Local taxes are due on services to remodel, repair, or restore nonresidential real property based on the location of the job site where the remodeling, repair, or restoration is performed. See also subsection (h)(2)(B) [(f)(2)(B)] of this section and §3.357 of this title.

(10) [(9)] Residential real property repair and remodeling and new construction of a real property improvement performed under a separated contract. When a contractor constructs a new improvement to realty pursuant to a separated contract or improves residential real property pursuant to a separated contract, the sale is consummated at the job site at which the contractor incorporates taxable items into the customer's real property. See also subsection (h)(2)(A) [(f)(2)(A)] of this section and §3.291 of this title.

(11) [(10)] Waste collection services. Local taxes are due on garbage or other solid waste collection or removal services based on the location at which the waste is collected or from which the waste is removed. For more information, refer to §3.356 of this title (relating to Real Property Service).

(l) Special exemptions and provisions applicable to individual jurisdictions.

(1) Residential use of natural gas and electricity.

(A) Mandatory exemptions from local sales and use tax. Residential use of natural gas and electricity is exempt from most local sales and use taxes. Counties, transit authorities, and most special purpose districts are not authorized to impose sales and use tax on the residential use of natural gas and electricity. Pursuant to Tax Code, §321.105, any city that adopted a local sales and use tax effective October 1, 1979, or later is prohibited from imposing tax on the residential use of natural gas and electricity. See §3.295 of this title.

(B) Imposition of tax allowed in certain cities. Cities that adopted local sales tax prior to October 1, 1979, may, in accordance with the provisions in Tax Code, §321.105, choose to repeal the exemption for residential use of natural gas and electricity. The comptroller's website provides a list of cities that impose tax on the residential use of natural gas and electricity, as well as a list of those cities that do not currently impose the tax, but are eligible to do so.

(C) Effective January 1, 2010, a fire control, prevention, and emergency medical services district organized under Local Government Code, Chapter 344 that imposes sales tax under Tax Code, §321.106, or a crime control and prevention district organized under Local Government Code, Chapter 363 that imposes sales tax under Tax Code, §321.108, that is located in all or part of a municipality that imposes a tax on the residential use of natural gas and electricity as provided under Tax Code, §321.105 may impose tax on residential use of natural gas and electricity at locations within the district. A list of the

special purpose districts that impose tax on residential use of natural gas and electricity and those districts eligible to impose the tax that do not currently do so is available on the comptroller's website.

(2) Telecommunication services. Telecommunications services are exempt from all local sales taxes unless the governing body of a city, county, transit authority, or special purpose district votes to impose sales tax on these services. However, since 1999, under Tax Code, §322.109(d), transit authorities created under Transportation Code, Chapter 451 cannot repeal the exemption unless the repeal is first approved by the governing body of each city that created the local taxing jurisdiction. The local sales tax is limited to telecommunications services occurring between locations within Texas. See §3.344 of this title. The comptroller's website provides a list of local taxing jurisdictions that impose tax on telecommunications services.

(3) Emergency services districts.

(A) Authority to exclude territory from imposition of emergency services district sales and use tax. Pursuant to the provisions of Health and Safety Code, §775.0751(c-1), an emergency services district wishing to enact a sales and use tax may exclude from the election called to authorize the tax any territory in the district where the sales and use tax is then at 2.0%. The tax, if authorized by the voters eligible to vote on the enactment of the tax, then applies only in the portions of the district included in the election. The tax does not apply to sales made in the excluded territories in the district and sellers in the excluded territories should continue to collect local sales and use taxes for the local taxing jurisdictions in effect at the time of the election under which the district sales and use tax was authorized as applicable.

(B) Consolidation of districts resulting in sales tax sub-districts. Pursuant to the provisions of Health and Safety Code, §775.018(f), if the territory of a district proposed under Health and Safety Code, Chapter 775 overlaps with the boundaries of another district created under that chapter, the commissioners court of each county and boards of the counties in which the districts are located may choose to create a consolidated district in the overlapping territory. If two districts that want to consolidate under Health and Safety Code, §775.024 have different sales and use tax rates, the territory of the former districts located within the consolidated area will be designated as sub-districts and the sales tax rate within each sub-district will continue to be imposed at the rate the tax was imposed by the former district that each sub-district was part of prior to the consolidation.

(4) East Aldine Management District.

(A) Special sales and use tax zones within district; separate sales and use tax rate. As set out in Special District Local Laws Code, §3817.154(e) and (f), the East Aldine Management District board may create special sales and use tax zones within the boundaries of the District and, with voter approval, enact a special sales and use tax rate in each zone that is different from the sales and use tax rate imposed in the rest of the district.

(B) Exemptions from special zone sales and use tax. The sale, production, distribution, lease, or rental of; and the use, storage, or other consumption within a special sales and use tax zone of; a taxable item sold, leased, or rented by the entities identified in clauses (i) - (vi) of this subparagraph are exempt from the special zone sales and use tax. State and all other applicable local taxes apply unless otherwise exempted by law. The special zone sales and use tax exemption applies to:

(i) a retail electric provider as defined by Utilities Code, §31.002;

(ii) an electric utility or a power generation company as defined by Utilities Code, §31.002;

(iii) a gas utility as defined by Utilities Code, §101.003 or §121.001, or a person who owns pipelines used for transportation or sale of oil or gas or a product or constituent of oil or gas;

(iv) a person who owns pipelines used for the transportation or sale of carbon dioxide;

(v) a telecommunications provider as defined by Utilities Code, §51.002; or

(vi) a cable service provider or video service provider as defined by Utilities Code, §66.002.

(5) Imposition of city sales tax and transit tax on certain military installations; El Paso and Fort Bliss. Pursuant to Tax Code, §321.1045 (Imposition of Sales and Use Tax in Certain Federal Military Installations), for purposes of the local sales and use tax imposed under Tax Code, Chapter 321, the city of El Paso includes the area within the boundaries of Fort Bliss to the extent it is in the city's extraterritorial jurisdiction. However, the El Paso transit authority does not include Fort Bliss. See Transportation Code, §453.051 concerning the Creation of Transit Departments.

(m) Restrictions on local sales tax rebates and other economic incentives. Pursuant to Local Government Code, §501.161, Section 4A and 4B development corporations may not offer to provide economic incentives, such as local sales tax rebates authorized under Local Government Code, Chapters 380 or 381, to persons whose business consists primarily of purchasing taxable items using resale certificates and then reselling those same items to a related party. A related party means a person or entity which owns at least 80% of the business enterprise to which sales and use taxes would be rebated as part of an economic incentive.

(n) Prior contract exemptions. The provisions of §3.319 of this title (relating to Prior Contracts) concerning definitions and exclusions apply to prior contract exemptions.

(1) Certain contracts and bids exempt. No local taxes are due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of any local tax if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of any local tax if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(2) Annexations. Any annexation of territory into an existing local taxing jurisdiction is also a basis for claiming the exemption provided by this subsection.

(3) Local taxing jurisdiction rate increase; partial exemption for certain contracts and bids. When an existing local taxing jurisdiction raises its sales and use tax rate, the additional amount of tax that would be due as a result of the rate increase is not due on the sale, use, storage, or other consumption in this state of taxable items used:

(A) for the performance of a written contract executed prior to the effective date of the tax rate increase if the contract may not be modified because of the tax; or

(B) pursuant to the obligation of a bid or bids submitted prior to the effective date of the tax rate increase if the bid or bids and contract entered into pursuant thereto are at a fixed price and not subject to withdrawal, change, or modification because of the tax.

(4) Three-year statute of limitations.

(A) The exemption in paragraph (1) of this subsection and the partial exemption in paragraph (3) of this subsection have no effect after three years from the date the adoption or increase of the tax takes effect in the local taxing jurisdiction.

(B) The provisions of §3.319 of this title apply to this subsection to the extent they are consistent.

(C) Leases. Any renewal or exercise of an option to extend the time of a lease or rental contract under the exemptions provided by this subsection shall be deemed to be a new contract and no exemption will apply.

(5) Records. Persons claiming the exemption provided by this subsection must maintain records which can be verified by the comptroller or the exemption will be lost.

(6) Exemption certificate. An identification number is required on the prior contract exemption certificates furnished to sellers. The identification number should be the person's 11-digit Texas taxpayer number or federal employer's identification (FEI) number.

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 December 18, 2019.

TRD-201904910

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: February 2, 2020

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 161. COMMUNITY JUSTICE ASSISTANCE DIVISION ADMINISTRATION

37 TAC §161.21

The Texas Board of Criminal Justice proposes amendments to §161.21, concerning the Role of the Judicial Advisory Council. The amendments are proposed in conjunction with a proposed rule review of §161.21 as published in another section of the *Texas Register*. The proposed amendments specify that functions of the Judicial Advisory Council include reviewing proposed changes to Texas Department of Criminal Justice (TDCJ) Community Justice Assistance Division (CJAD) standards and making recommendations to the TDCJ CJAD director. The proposed amendments also make minor grammatical updates.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the rule, will be to clarify the functions of the Judicial Advisory Council. No cost will be imposed on regulated persons.

The rule will have no impact on government growth; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogcomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code §§492.006, 492.013, 493.003(b), 2110.005.

Cross Reference to Statutes: None.

§161.21. *Role of the Judicial Advisory Council.*

(a) Purpose. ~~[Policy.]~~ The Texas Board of Criminal Justice (TBCJ) acknowledges the judiciary's ~~[statutory responsibility and the]~~ valuable and critical role ~~[of the judiciary]~~ in the growth, development, and implementation of community corrections policies and programs in Texas. In accordance with Texas Government Code §493.003(b), the [The] Judicial Advisory Council (JAC) is intended to provide a structure for fulfilling that role.

(b) The [State-level Role of the JAC. In accordance with Texas Government Code §493.003(b), the] function of the JAC is to advise the TBCJ and the Texas Department of Criminal Justice (TDCJ) Community Justice Assistance Division ([TDCJ] CJAD) director on matters of interest to the judiciary. To accomplish this purpose, the JAC shall:

(1) act [Act] as an information exchange and provide expert advice to the TBCJ and the TDCJ CJAD director;

(2) be [Be] given an opportunity to report to the TBCJ at each regularly scheduled meeting on matters of interest to the judiciary, including any item related to the operation of the community justice system[; as] determined by the JAC chairperson [chairman] to require the TBCJ's consideration; [and]

(3) ~~[Conduct a] review [of] requests for funding of community corrections programs and projects received by the TDCJ CJAD, and make recommendations to the TDCJ CJAD director on the funding of reviewed requests, subject to review, ratification, and final approval by the TBCJ, if such approval is required by TBCJ policy; and[-]~~

(4) review proposed changes to the TDCJ CJAD standards and make recommendations to the TDCJ CJAD director.

(c) ~~[Local-level Role of the JAC.]~~ In addition to the duties set out in subsection (b) of this section [rule], the JAC shall:

(1) inform their [Inform and educate, in an appropriate manner, the] constituencies [that its members represent] regarding issues [and procedures] that affect the corrections system of Texas;

(2) coordinate [Coordinate] its activities with the community justice liaison member of the TBCJ, the TDCJ CJAD director, the [local] community supervision and corrections departments (CSCDs), and any other [significant] entities identified by the TDCJ CJAD director or TDCJ [the] executive director [of the TDCJ]; and

(3) provide [Provide] a forum for the exchange of information [and a dialogue] with the network of [local] CSCDs on matters involving community corrections programs.

(d) ~~[Additional Authority of the JAC.]~~ The JAC chairperson [chairman] may appoint committees of council members or advisory groups as appropriate [of non-JAC members] to achieve the purposes of this section [rule]. The JAC chairperson [chairman] shall consult with the TDCJ CJAD director regarding the scheduling of meetings of the JAC, JAC committees [of the JAC], or JAC advisory groups [to the JAC], to ensure arrangements can be made and sufficient funds exist to allow reimbursement of expenses for attendance, as [where] authorized by law.

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 December 13, 2019.

TRD-201904833

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

Earliest possible date of adoption: February 2, 2020

For further information, please call: (936) 437-6700



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 24. HEMP PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§24.1 - 24.4

The Texas Department of Agriculture withdraws the proposed new §§24.1 - 24.4, which appeared in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7580).

Filed with the Office of the Secretary of State on December 16, 2019.

TRD-201904838
Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
Effective date: December 16, 2019
For further information, please call: (512) 463-7476



SUBCHAPTER B. FEES

4 TAC §§24.5 - 24.7

The Texas Department of Agriculture withdraws the proposed new §§24.5 - 24.7, which appeared in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7580).

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Tim Kleinschmidt
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Texas Department of Agriculture
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For further information, please call: (512) 463-7476



SUBCHAPTER C. LICENSING

4 TAC §§24.8 - 24.19

The Texas Department of Agriculture withdraws the proposed new §§24.8 - 24.19, which appeared in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7580).

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TRD-201904840
Tim Kleinschmidt
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Texas Department of Agriculture
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For further information, please call: (512) 463-7476



SUBCHAPTER D. INSPECTIONS, SAMPLING AND COLLECTION

4 TAC §§24.20 - 24.23

The Texas Department of Agriculture withdraws the proposed new §§24.20 - 24.23, which appeared in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7580).

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TRD-201904841
Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7476



SUBCHAPTER E. TESTING

4 TAC §§24.24 - 24.29

The Texas Department of Agriculture withdraws the proposed new §§24.24 - 24.29, which appeared in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7580).

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TRD-201904842
Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
Effective date: December 16, 2019
For further information, please call: (512) 463-7476



SUBCHAPTER F. DISPOSAL

4 TAC §24.30, §24.31

The Texas Department of Agriculture withdraws the proposed new §24.30 and §24.31, which appeared in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7580).

Filed with the Office of the Secretary of State on December 16, 2019.

TRD-201904843
Tim Kleinschmidt
General Counsel

Texas Department of Agriculture
Effective date: December 16, 2019

For further information, please call: (512) 463-7476



SUBCHAPTER G. ENFORCEMENT

4 TAC §§24.32 - 24.38

The Texas Department of Agriculture withdraws the proposed new §§24.32 - 24.38, which appeared in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7580).

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TRD-201904844
Tim Kleinschmidt
General Counsel

Texas Department of Agriculture
Effective date: December 16, 2019

For further information, please call: (512) 463-7476



SUBCHAPTER H. TRANSPORTATION

4 TAC §§24.39 - 24.43

The Texas Department of Agriculture withdraws the proposed new §§24.39 - 24.43, which appeared in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7580).

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TRD-201904845
Tim Kleinschmidt
General Counsel

Texas Department of Agriculture
Effective date: December 16, 2019

For further information, please call: (512) 463-7476



SUBCHAPTER I. SEED

4 TAC §§24.44 - 24.48

The Texas Department of Agriculture withdraws the proposed new §§24.44 - 24.48, which appeared in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7580).

Filed with the Office of the Secretary of State on December 16, 2019.

TRD-201904846
Tim Kleinschmidt
General Counsel

Texas Department of Agriculture
Effective date: December 16, 2019

For further information, please call: (512) 463-7476



**SUBCHAPTER J. AGRICULTURAL OR
ACADEMIC HEMP RELATED RESEARCH**

4 TAC §24.49, §24.50

The Texas Department of Agriculture withdraws the proposed new §24.49 and §24.50, which appeared in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7580).

Filed with the Office of the Secretary of State on December 16, 2019.

TRD-201904847
Tim Kleinschmidt
General Counsel

Texas Department of Agriculture
Effective date: December 16, 2019

For further information, please call: (512) 463-7476



TITLE 7. BANKING AND SECURITIES

**PART 6. CREDIT UNION
DEPARTMENT**

**CHAPTER 91. CHARTERING, OPERATIONS,
MERGERS, LIQUIDATIONS**

**SUBCHAPTER J. CHANGES IN CORPORATE
STATUS**

7 TAC §91.1003

The Credit Union Department withdraws the proposed amended §91.1003, which appeared in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3725).

Filed with the Office of the Secretary of State on December 18, 2019.

TRD-201904878
John J. Kolhoff
Commissioner

Credit Union Department
Effective date: December 18, 2019

For further information, please call: (512) 837-9236



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

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 new Title 4, Chapter 19, Subchapter U, Citrus Canker Quarantine, §§19.400 - 19.408, published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6643), without changes. These rules will not be republished.

The adoption of §§19.400 - 19.408 establishes requirements and restrictions necessary to address dangers posed by destructive strains of citrus canker in parts of Brazoria, Cameron, Fort Bend, and Harris counties. Previous requirements and restrictions were adopted on an emergency basis.

The Department did not receive any comments on the proposal.

The rules are adopted under the Texas Agriculture Code, §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 rules to provide for a program to manage or eradicate exotic citrus diseases, including citrus canker and citrus greening; and §12.020, which authorizes the Department to assess administrative penalties for violations of Chapter 71 of the Texas Agriculture Code.

Chapters 12, 71, and 73 of the Texas Agriculture Code are affected by the adoption.

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 December 17, 2019.

TRD-201904864

Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
Effective date: January 6, 2020
Proposal publication date: November 8, 2019
For further information, please call: (512) 463-7476

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.70

The Railroad Commission of Texas (Commission) adopts amendments to §3.70, relating to Pipeline Permits Required, without changes to the proposed text as published in the October 18, 2019, issue of the *Texas Register* (44 TexReg 5965). The rule will not be republished. The amendments clarify language related to production and flow lines, allow each operator to renew all its permits in the same month, clarify fee requirements for gathering pipelines, and reduce late fees for operators with 50 miles or less of pipeline.

The Commission received one comment on the proposed amendments from the Texas Oil and Gas Association (TXOGA). However, the comment merely referenced the scope of §3.70 in its comments on the Commission's amendments to Chapter 8, which were proposed concurrently with the amendments to §3.70; TXOGA did not comment on the content of proposed amendments to §3.70. The Commission appreciates TXOGA's review.

The amendments in subsection (a) reduce confusion regarding when production or flow lines do not leave a lease and, therefore, do not need a permit. The current rule language only requires production or flow lines to have a pipeline permit if the production or flow line leaves a lease. The amendments remove the language related to whether a production or flow line leaves a lease in its entirety. Instead, the Commission will only require a permit for those production and flow lines over which the Commission has pipeline safety jurisdiction. The Commission currently exercises pipeline safety jurisdiction over two categories of production and flow lines: (1) certain onshore pipeline and gathering production facilities, as defined in §8.1(a)(1)(B) of this title (relating to General Applicability and Standards); and (2) all pipeline facilities originating in Texas waters, as defined in §8.1(a)(1)(D) of this title. The Commission does not have pipeline safety jurisdiction over production and flow lines that are not defined in §8.1(a)(1)(B) and §8.1(a)(1)(D) of this title, and

therefore will no longer require a permit for those pipelines—even if the pipelines leave a lease. The Commission adopts a definition of production and flow lines similar to the definition used in API RP 80 to help reduce confusion. The Commission's intention is to clarify which production or flow lines require a permit. To determine which lines require a permit, operators can perform the following analysis: if the production or flow line meets either of the definitions in §8.1(a)(1)(B) and §8.1(a)(1)(D) of this title, the operator is required to obtain a permit for the line; if the production or flow line does not meet either of the definitions in §8.1(a)(1)(B) and §8.1(a)(1)(D) of this title, the operator is not required to obtain a permit for the line.

The amendments in subsection (i) clarify that the fee requirements for gathering pipelines regulated under new §8.110 (which is part of amendments to Chapter 8 proposed concurrently with the amendments to §3.70) are still designated as Group B and will continue to pay an annual fee of \$10 per mile of gathering pipeline permitted to the operator. Other non-substantive amendments are adopted in subsection (i).

Amendments in subsection (j) create a new annual permit renewal timeline beginning September 1, 2020. Currently, each permit has a specific annual renewal date, which, generally, is based on the date of permit application. Individual permit renewal is burdensome for both operators and Commission staff. The amendments maintain the current renewal process for one year, but beginning September 1, 2020, operators will renew all their permits within a designated month assigned to operators alphabetically. Operators whose names begin with the letters A through C shall file in February; operators whose names begin with the letters D through E shall file in March; operators whose names begin with the letters F through L shall file in April; operators whose names begin with the letters M through P shall file in May; operators whose names begin with the letters Q through T shall file in June; and operators whose names begin with the letters U through Z and operators whose names begin with numerical values or other symbols shall file in July. For example, beginning September 1, 2020, an operator whose name begins with A shall pay all its permit renewals in February 2021.

New subsection (k) addresses renewal dates when permits are transferred or an operator adds a new permit. Subsection (k)(1) states that if a permit is transferred, in the Commission fiscal year of the transfer the acquiring operator shall renew that permit in its designated month. If the acquiring operator receives the transferred permit in a Commission fiscal year after its renewal month as passed, acquiring operator shall pay the renewal fee upon transfer. Subsection (k)(2) states that if an operator adds a new permit and pays the new permit fee, it is not required to pay the renewal fee for that permit in the same Commission fiscal year. Subsection (k)(3) states that if an operator adds a new permit after its renewal month has passed, the new permit shall be renewed the following Commission fiscal year in the operator's designated month.

Amendments in subsection (l) reflect changes to the renewal process in subsection (j).

New subsection (m) reduces the late fee for operators with a total mileage of 50 miles or less of pipeline who fail to pay the annual mileage fee on time. Corresponding changes are adopted in subsection (n) such that the existing late fees only apply to operators with a total mileage of more than 50 miles of pipeline.

The Commission adopts the amendments to §3.70 pursuant to Texas Natural Resources Code, §81.071, enacted by the 85th Legislature (Regular Session, 2017) in House Bill 1818, which authorizes the Commission to establish pipeline safety and regulatory fees to be assessed for permits or registrations for pipelines under the jurisdiction of the Commission's pipeline safety and regulatory program. Additionally, the Commission proposes the amendments pursuant to §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code §81.0531, which authorizes the Commission to assess a penalty for a violation of a provision of Title 3 of the Texas Natural Resources Code, or a rule, order, license, permit, or certificate that relates to pipeline safety; §85.202, which authorizes the Commission to promulgate rules requiring records to be kept and reports made, and providing for the issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the Commission's rules for the prevention of waste; Texas Natural Resources Code §86.041 and §86.042, which allow the Commission broad discretion in adopting rules to prevent waste in the piping and distribution of gas, require records to be kept and reports made, and provide for the issuance of permits and other evidences of permission when the issuance of the permit or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; Texas Natural Resources Code §111.131 and §111.132, which authorize the Commission to promulgate rules for the government and control of common carriers and public utilities; Texas Natural Resources Code §§117.001 - 117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. §§60101, et seq.; and Texas Utilities Code §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 81.0531, 81.071, 85.202, 86.041, 86.042, 111.131, 111.132, and §§117.001 - 117.101; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81, Chapter 111, and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

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 December 17, 2019.

TRD-201904869



CHAPTER 8. PIPELINE SAFETY REGULATIONS

The Railroad Commission of Texas (Commission) adopts amendments in Subchapter A to §8.1 and §8.5, relating to General Applicability and Standards, and Definitions; in Subchapter B to §§8.101, 8.115, 8.125 and 8.135, relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, New Construction Commencement Report, Waiver Procedure, and Penalty Guidelines for Pipeline Safety Violations; in Subchapter C to §§8.201, 8.205, 8.206, 8.209, 8.210, 8.225, 8.230, 8.235, and 8.240, relating to Pipeline Safety and Regulatory Program Fees, Written Procedure for Handling Natural Gas Leak Complaints, Risk-Based Leak Survey Program, Distribution Facilities Replacements, Reports, Plastic Pipe Requirements, School Piping Testing, Natural Gas Pipelines Public Education and Liaison, and Discontinuance of Service, including one change in the title of Subchapter C; in Subchapter D to §8.301 and §8.315 relating to Required Records and Reporting, and Hazardous Liquids and Carbon Dioxide Pipelines or Pipeline Facilities Located Within 1,000 Feet of a Public School Building or Facility. The Commission also adopts new §8.110, relating to Gathering Pipelines, in Subchapter B.

The Commission adopts §§8.110, 8.115, and 8.301 with changes and the remaining rules without changes from the proposed text as published in the October 18, 2019, issue of the *Texas Register* (44 TexReg 5969). Sections 8.110, 8.115, and 8.301 will be republished. The other rules will not be republished.

The Commission received six comments, three of which were from associations. The Commission received one comment on §8.1. The Texas Oil and Gas Association (TXOGA) recommended clarifying the provisions describing rule applicability. Specifically, the Commission should clarify applicability of Chapter 8 with regard to onshore pipeline and gathering facilities and gathering and production beyond the first point of measurement as described in §8.1(a)(1)(B). Because the Commission did not propose changes on this topic, the Commission declines to adopt the section with the requested changes. However, the Commission will provide clarification regarding §8.1. Section 8.1(a)(1)(A) - (D) lists the pipelines and/or facilities that are subject to the provisions of Chapter 8. Section 8.1(a)(1)(B) describes onshore production/flow lines in Class 2, 3 or 4 locations beginning after the first point of measurement and ending at the beginning of a gathering pipeline; therefore, those lines are under the Commission's pipeline safety jurisdiction. Onshore production/flow lines in Class 1 locations (the majority of production/flow lines) are not listed in §8.1, and therefore are not subject to the Commission's pipeline safety jurisdiction.

The Commission received one comment on §8.101. The Texas Pipeline Association (TPA) requested deletion of deadlines contained in the second and third sentences of subsection (b) because the deadlines have passed and provide no historical value. The Commission disagrees because retaining the dead-

lines would allow the Commission to require compliance if a Commission inspector discovers an operator did not meet the deadlines.

The Commission received three comments on §8.110. GPA Midstream Association (GPA) said the term "reasonably prudent manner" used in proposed §8.110(b) is too vague. GPA suggested, "Each operator of a gathering pipeline . . . shall take appropriate action to correct a hazardous condition that creates a risk to public safety." GPA also requested that the corrective action and prevention requirements in subsection (e) be tied to the language suggested above. The Commission agrees with both suggestions and adopts §8.110 with changes to subsections (b) and (e) to address these comments. Finally, GPA expressed support for proposed language that extends incident and accident reporting to all gathering lines but requested that the report be required in writing only because telephonic reports are not always necessary in rural locations. The Commission disagrees because the new rule will help the Commission receive data on gathering lines in Class 1 and rural locations. Telephonic reports will ensure the most accurate data. However, as discussed below, the Commission adopts §8.110 with a change to require only the written incident report for certain hazardous liquids gathering lines subject to §8.110.

TXOGA also provided comments on §8.110. TXOGA requested the Commission revise subsection (d) to include a clear definition of "a threat to public safety" and "a complaint related to public safety." The Commission declines to adopt §8.110 with new definitions that were not provided for public comment. TXOGA also expressed opposition to language proposed in subsection (c), which requires non-regulated gas and liquid gathering lines in Class 1 locations and rural areas to follow the same reporting requirements as regulated other gathering lines (i.e., an incident or accident must be telephonically reported within one hour of confirmed discovery). TXOGA states that §8.110(c) is inconsistent with PHMSA requirements.

The Commission notes that the same day it approved proposed amendments to Chapter 8, including new §8.110, PHMSA issued a final rule that incorporated reporting requirements for liquid gathering lines in rural areas. PHMSA's rule (84 FR 52260) does not require telephonic notification within one hour of confirmed discovery for an accident on a liquid gathering line in a rural location. Therefore, the Commission adopts §8.110(c)(2) with a change to require only written notification in lieu of telephonic notification of an accident on a liquid gathering line in a rural location. A change was also made to §8.301 to align with the new PHMSA rule. The Commission declines to make this change for gas gathering lines.

TPA's comment on §8.110 requested that the Commission replace "reasonably prudent manner" with "utilizing processes and technologies that are technically feasible, reasonable, cost-effective, and practicable." The Commission adopts §8.110(b) with a change to incorporate language that is a combination of the language suggested by GPA and TPA.

The Commission received six comments on §8.115. CenterPoint Energy requested narrowing subsection (a)(5) to apply to a new subdivision or construction that results in a new distribution system ID. The Commission agrees and adopts §8.115(a) with the requested change. CenterPoint also requested revisions to Form PS-48 to instruct operators to file the form via email. The Commission agrees and will include such wording in upcoming revisions to the form.

CPS Energy requested clarification on whether the term "pipelines" in §8.115(a) includes services installed on each installation. The Commission confirms this is correct. CPS also asked whether the installation length for joint trench installations is the total length of pipe or the distance from originating point to terminating point of the installation. The Commission confirms that the installation length is the total length of pipe. Third, CPS requested that natural gas distribution and master meter systems be exempt from reporting requirements in subsection (a)(2) and instead fall under subsection (a)(4). The Commission agrees and notes that is the intent of subsection (a)(2), which states, "except as provided in paragraphs (4) and (5)."

Relatedly, an individual requested that the Commission revise (a)(2) to state, "Except as provided by paragraphs (4) and (5)..." instead of only referencing paragraph (4). The Commission agrees and adopts §8.110(a)(2) with that change. The same individual asked whether operators are required to notify the Commission 30 days in advance for extending a gas main 200 feet to reach a new customer. Due to changes adopted in §8.115(a), the answer is no. Notification would only be required in that instance if the extension was considered by the operator to be a new subdivision or a new system ID. The individual also requested a matrix to clarify which pipelines of which length require which type of notification. The Commission will monitor questions related to this amended provision and may add a matrix or an explanation to the Commission's website if warranted.

GPA expressed support for §8.115(a)(7), which exempts rural gathering lines subject to new §8.110 from the construction reporting requirements. The Commission appreciates GPA's support.

TXOGA's comment on §8.115 stated requiring 30-day notification prior to installation of any breakout tank is inconsistent with PHMSA requirements. The proposed language creates situations where operators may need to delay replacement or installation of breakout tanks where an emergency request is not warranted. The Commission agrees and adopts §8.115(a)(3) with changes to address this concern. TXOGA also notes the requirement to notify the Commission of new, relocated, or replacement pipeline 10 miles or more within 60 days is redundant of the requirement in 49 CFR 191.22(c)(1)(ii) and 195.64(c)(1)(ii). The Commission agrees the notification is duplicative of federal requirements and the Commission has generally omitted duplicative filings in Chapter 8 but filing a new construction report with the Commission is still necessary because it affords the Commission the opportunity to receive timely, complete information.

TPA requested removing the phrase "and other facilities" in §8.115(a) because the remainder of the section sufficiently clarifies the reporting requirements for each type of pipeline. The Commission disagrees because the clarification provided in the rule does not account for all facility types. TPA requested revising subsection (a)(3) to include an exemption for temporary breakout tanks. Due to comments from TXOGA and TPA on this topic, the Commission adopts §8.115(a)(3) with changes. TPA also asked that the Commission clarify the meaning of breakout tanks. The Commission declines to clarify the meaning as the term "breakout tank" is defined under 49 CFR Part 195. Any tank meeting this definition would require notification.

The Commission received one comment on §8.210 from TPA. TPA noted gathering operators will not have all of the information needed to fully complete the required forms or reports for incident and accident reporting. TPA requested a change that

allows these operators to respond that the required information is not known. The Commission understands that gathering operators may need to mark "unknown" in certain areas of the forms or reports. However, it is the Commission's expectation that gathering operators work to compile accurate data on their lines. The Commission declines to make any changes to the rule based on this comment.

Finally, the Commission received two comments on §8.301. GPA stated that unlike related federal requirements, the proposed language does not distinguish between accidents that require telephonic reporting within one hour of discovery and those that are minor such that they only require a 30-day written report. GPA requested that §8.301 align with federal requirements instead of being more stringent. TPA also requested the Commission align §8.301 with PHMSA requirements. The Commission notes that the existing language is already more stringent than its federal counterpart. The amendments merely reorganize the section for clarification.

TPA expressed support for the clarifying amendments in §8.301 but requested the Commission replace the "and" between CFR references with "or." The Commission agrees and adopts §8.301 with "or." TPA reiterated its comment on §8.210 that gathering operators will not have all the information on their systems to fully report incidents within the one-hour deadline. The Commission understands gathering operators will not always have all pertinent information but encourages these operators to compile more accurate data on their lines.

The adopted amendments include non-substantive clarifications and corrections in the following sections. Amendments in §8.1(d), §8.210, §8.235, §8.301, and §8.315 require an operator to retain copies of United States Department of Transportation (DOT) or certain other filings and provide copies to the Commission only upon request. In §8.5, amendments to the definitions of "applicant," "director," and "division" correct the name of the Commission's division; amendments in §8.201 and §8.209 also correct the division name. Amendments in §8.125(g) and (h) clarify references to the Hearings Division and orders. An amendment in §8.230 corrects a statutory reference. Amendments in §8.301 clarify accident reporting and other existing wording.

The Commission adopts the amendment in §8.1(b) to update the minimum safety standards and to adopt by reference the DOT pipeline safety standards found in 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards. Current subsection (b) adopted the federal pipeline safety standards as of October 31, 2017. The amendment amends the date to January 22, 2019, to capture the federal safety rule amendment summarized in the following paragraph.

Docket No. PHMSA-2014-0098: Amdt. No. 192-124, amended the Federal Pipeline Safety Regulations that govern the use of plastic piping systems in the transportation of natural and other gas. These amendments are necessary to enhance pipeline safety, adopt innovative technologies and best practices, and respond to petitions from stakeholders. The changes include increasing the design factor of polyethylene pipe; increasing the maximum pressure and diameter for Polyamide-11 pipe and components; allowing the use of Polyamide-12 pipe and components; new standards for risers, more stringent standards for plastic fittings and joints; stronger mechanical fitting requirements; the incorporation by reference of certain new or updated consensus standards for pipe, fittings, and other components;

the qualification of procedures and personnel for joining plastic pipe; the installation of plastic pipe; and a number of general provisions. The effective date of these amendments is January 22, 2019.

As described in the following paragraphs, other adopted amendments align Commission rules with federal regulations adopted by the Pipeline and Hazardous Materials Safety Administration (PHMSA). PHMSA provides funding for state pipeline safety programs as long as those programs comply with PHMSA's minimum standards. Some of the amendments to Chapter 8 are adopted to ensure Texas complies with those minimum standards and retains PHMSA funding.

Some amendments change the term "natural gas" to "gas" to clarify that propane gas distribution systems must also comply with requirements for distribution systems. These amendments in §8.5 include the definitions for "master metered system," "natural gas or other gas supplier," "person responsible for a school facility," and "school facility". Amendments are also adopted in §8.5 to align the definition of "private school" with the definition provided in the Texas Education Code. Amendments in §8.205 also change the term "natural gas" to "gas", and the title of Subchapter C includes a corresponding change.

The amendments in §8.101(b)(1)(C)(iii) delete the director approval requirement for direct assessment and make other non-substantive corrections. Director approval for direct assessment is no longer needed because there is now a National Association of Corrosion Engineers (NACE) standard for direct assessment which was not available when §8.101 was originally adopted. A related change removes a request to use the direct assessment method from the definition of "applicant" in §8.1(2). A change to §8.101(e) removes outdated language.

Adopted new rule §8.110 implements certain Commission jurisdiction over gathering pipelines in Class 1 locations and rural areas, which was granted by the legislature in House Bill 2982 during the 83rd Legislative Session. Specifically, House Bill 2982 granted the Commission authority to establish safety standards and practices for gas gathering pipelines and facilities in Class 1 locations and hazardous liquids and carbon dioxide gathering pipelines and facilities in rural areas. House Bill 2982 mandated that, for the first two years the statutes were in effect, the Commission could only implement the changes to provide a process for the Commission to investigate an accident, an incident, a threat to public safety, or a complaint, and to require an operator to submit a plan to remediate the same.

As a result, since September 1, 2013, the Commission has been investigating incidents and accidents on Class 1 gathering lines and rural gathering lines and responding to complaints and other threats to the public. However, the Commission did not have regulations requiring reporting during this time. As a direct result of its investigation and response efforts, the Commission has recognized the need to compile more accurate and complete information regarding the incidents and accidents that are occurring on gathering systems located in Class 1 locations and rural areas.

The rules adopted by the Commission pursuant to House Bill 2982 must be based on the risks the transportation and facilities present to the public safety. Adopted amendments in §8.110(a) define the scope of the rule. Section 8.110(b) is adopted with a change to require an operator of a gathering line in a Class 1 location or rural area as defined in subsection (a) to take appropriate action using processes and technologies that are tech-

nically feasible, reasonable, and practicable to correct a hazardous condition that creates a risk to public safety. Adopted §8.110(c) requires operators subject to the rule to report incidents and accidents to the Commission pursuant to the Commission's reporting requirements. Subsection (d) requires operators to conduct an investigation after an incident or accident and cooperate with the Commission during the Commission's investigation. Subsection (e) is adopted with a change to ensure the corrective action plan requirement is related to a risk to public safety. Subsection (e) allows the Commission to require the operator to submit a corrective action plan to the Commission to remediate an accident, incident, or other hazardous condition that creates a risk to public safety, or to address a complaint the Commission has confirmed relates to public safety. Complaints will be verified by the Commission before it will require an operator to submit a remediation/corrective action plan in response. The reporting, investigation, and corrective action requirements will allow the Commission to gather accurate data and analyze any trends in incident or accident occurrences. This will allow the Commission to more thoroughly assess the risks gathering lines in Class 1 locations and rural areas present to the public safety.

Adopted amendments in §8.115 amend the time period during which each operator must notify the Commission regarding the construction of pipelines and other facilities. For construction of 10 or more miles of a new, relocated, or replacement pipeline, the operator shall notify the Commission not later than 60 days before construction, which aligns with current PHMSA requirements. The 60-day requirement applies to all pipeline operators, including gas distribution companies, master meter systems, and liquefied petroleum gas distribution companies. For construction of one or more but less than 10 miles of a new, relocated, or replacement pipeline (excluding gas distribution companies, master meter systems, and liquefied petroleum gas distribution companies), an operator shall notify the Commission not later than 30 days before construction.

The Commission adopts different requirements for new construction, relocations, or replacements less than 10 miles in length on natural gas distribution systems, liquefied petroleum gas distribution systems, and master meter systems. For relocated or replacement construction on liquefied petroleum gas distribution systems, natural gas distribution systems, or master meter systems less than three miles in length, no construction notification is required. For relocated or replacement construction on natural gas distribution systems, liquefied petroleum gas distribution systems, or master meter systems three or more miles in length but less than 10 miles in length, in lieu of notifying the Commission 30 days prior to construction, an operator may provide to the Commission a monthly report that reflects all known projects planned to be completed in the following 12 months, all projects that are currently in construction, and all projects completed since the prior monthly report. The report should provide the status of the project, the city and county of location, a description of the project, and the estimated commencement date and end date. The amendments also provide the option for providing a monthly report for new construction of a new liquefied petroleum gas distribution system, natural gas distribution system, or master meter system less than 10 miles in length that results in a new subdivision or a new system ID. The option to file a monthly report will reduce the large number of reports that would be required for large distribution operators who replace and relocate lines often, while still giving small distribution operators the flexibility to simply file a construction

report. Amended §8.115 also requires notification of the installation of any breakout tank.

Amendments to §8.115 retain the requirement that the construction report be filed with the Commission on a Form PS-48, except for natural gas distribution systems, liquified petroleum gas distribution system, and master meter systems, for which operators have the option to file a monthly report in certain circumstances as described in §8.115(a)(4) and (5). The amendments also clarify that if notification is not feasible because of an emergency, an operator must notify the Commission as soon as practicable. Furthermore, the amendments specify that construction reports will be valid for a period of eight months from the time they are filed with the Commission. If construction is not commenced during that eight-month period, the construction report expires and the operator must file a new report. In the alternative, operators may request one six-month extension on the original construction report. Operators may submit their request for extension to safety@rrc.texas.gov before the original construction report expires. The expiration date and limited renewal will ensure that the Commission has accurate records. The Commission has authority to conduct new construction inspections, and for planning purposes and efficient use of state resources it is important for the Pipeline Safety Department to have accurate records regarding when construction is set to commence. Section 8.115 (a)(2), (a)(3), and (a)(5) are adopted with changes to address comments on the proposed language, as discussed above.

Amendments in §8.125(a) and (g)(2) clarify that an operator must request a waiver and before the operator engages in the activities covered by the proposed waiver.

Amendments in §8.135 include clarifications to the tables for penalty guidelines and penalty worksheet in order to include subparts from 49 CFR Parts 192 and 195 that are not currently addressed, as well as include penalties for violations of §8.110. The amendments also revise the statutory reference for the Commission's penalty jurisdiction over pipeline safety violations since House Bill 866 (86th Legislature) expands the authority under which the Commission may assess an administrative penalty for pipeline safety violations.

Amendments in §8.206 remove dates that have passed and, therefore, are no longer applicable. The amendments in §8.206(c) and (f) also add an additional three months in which to comply with each deadline prescribed by the rule, which is consistent with federal requirements.

Amendments in §8.209 remove dates that have passed and, therefore, are no longer applicable. For example, the Commission deletes former subsection (f)(1) because there are no longer priority 1 lines that meet the criteria in that provision or that could be replaced by that date. The amendments in §8.209(h) also implement House Bill 866 from the 86th Legislative Session, which requires operators to annually remove or replace at least eight percent of underground distribution gas pipeline facilities posing the greatest risk in the system and identified for replacement under the program. Eight percent is an increase from the current requirement of five percent. The amendments in new subsection (k) also implement House Bill 866 and prohibit a distribution gas pipeline facility operator from installing cast iron, wrought iron, or bare steel pipelines in its underground system. Any known existing cast iron pipelines are required to be replaced by December 31, 2021.

Amendments in §8.210 implement House Bill 864 from the 86th Legislative Session. These amendments require the telephonic

report to be due at the earliest practical moment, but at the latest one hour following confirmed discovery of a pipeline leak or incident. One hour is also the current PHMSA reporting requirement. Other amendments that implement House Bill 864 include a requirement to submit an additional report to the Commission when more information is known by distribution operators and a requirement in subsection (e) that the Commission retain pipeline incident records perpetually. The amendments also eliminate the requirement for operators to submit written DOT incident forms and annual reports to the Commission and instead require operators to retain them and provide them to the Commission upon request.

An amendment in §8.210(e) deletes references to a regulated plastic gas gathering line and a plastic gas transmission line from the requirement for reporting repaired leaks to the Division.

The amendments in §8.225 delete most of the current wording now covered by Distribution Integrity Management Program (DIMP) requirements and adds that operators shall retain all records relating to plastic pipe installation in accordance with 49 CFR Part 192 and provide such records to the Commission upon request.

Adopted new wording in §8.240 adds requirements for "soft close" programs to be utilized by distribution operators for certain customer accounts in certain short-term situations. Allowing soft-close procedures will allow distribution operators and customers an easy transition from one customer to another.

Section 8.301(a)(1)(B) and Section 8.301(a)(2)(B) are adopted with a change to conform with adopted changes in §8.110, which require only written notification in lieu of telephonic notification of an accident on a liquid gathering line in a rural location. Amendments in §8.301 clarify that the telephonic report for other accidents involving crude oil is due at the earliest practical moment, but at the latest one hour following confirmed discovery of a pipeline accident. One hour is also the current PHMSA reporting requirement. The amendments also eliminate the requirement for operators to submit written Department of Transportation incident forms and annual reports to the Commission and instead requires operators to retain them and provide them to the Commission upon request.

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1, §8.5

Statutory Authority: The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, *et seq.*; and Texas Utilities Code, §§121.201-121.211, 121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; which authorize the Commission to adopt safety standards and practices applicable to the

transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

16 TAC §§8.101, 8.110, 8.115, 8.125, 8.135

Statutory Authority: The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, *et seq.*; and Texas Utilities Code, §§121.201-121.211, 121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§8.110. *Gathering Pipelines.*

(a) Scope. This section applies to the following gathering pipelines:

(1) natural gas gathering pipelines located in a Class 1 location not regulated by 49 CFR §192.8 or §8.1 of this title (relating to General Applicability and Standards); and

(2) hazardous liquids and carbon dioxide gathering pipelines located in a rural area as defined by 49 CFR §195.2 and not regulated by 49 CFR §195.1, 49 CFR §195.11, or §8.1 of this title.

(b) Safety. Each operator of a gathering pipeline described in subsection (a) of this section shall take appropriate action using processes and technologies that are technically feasible, reasonable, and practicable to correct a hazardous condition that creates a risk to public safety.

(c) Reporting.

(1) Each operator of a gas gathering pipeline described in subsection (a) of this section shall comply with §8.210(a) of this title (relating to Reports).

(2) Each operator of a hazardous liquids pipeline described in subsection (a) of this section shall comply with §8.301(a)(1)(B) and (a)(2)(B) of this title (relating to Required Records and Reporting) except that the initial telephonic report is not required.

(d) Investigation.

(1) Each operator of a gathering pipeline described in subsection (a) of this section shall conduct its own investigation and cooperate with the Commission and its authorized representatives in the investigation of any of the following:

- (A) an accident as defined by 49 CFR §195.50;
- (B) an incident as defined by 49 CFR §191.3;
- (C) a threat to public safety; or
- (D) a complaint related to operational safety.

(2) Each operator shall provide the Commission reasonable access to the operator's facilities, provide the Commission any records related to such facilities, and file such reports or other information necessary to determine whether there is a threat to the continuing safe operation of the pipeline.

(e) Corrective action and prevention of recurrence. As a result of the investigations authorized under subsection (d) of this section, the Commission may require the operator to submit a corrective action plan to the Commission to remediate an accident, incident, or other hazardous condition that creates a risk to public safety, or to address a complaint related to public safety. Upon the Commission's review and approval of the corrective action plan, the operator shall complete the corrective action. No provision of this rule prevents the operator from implementing any corrective action at any time the operator deems necessary or prudent to correct or prevent a threat to the safe operation of the gathering pipeline and pipeline facilities.

§8.115. *New Construction Commencement Report.*

(a) An operator shall notify the Commission before the construction of pipelines and other facilities as follows.

(1) For construction of a new, relocated, or replacement pipeline 10 miles in length or longer including liquified petroleum gas distribution systems, natural gas distribution systems, and master meter systems 10 miles in length or longer, an operator shall notify the Commission not later than 60 days before construction.

(2) Except as provided in paragraphs (4) and (5) of this subsection, for construction of a new, relocated, or replacement pipeline at least one mile in length but less than 10 miles, an operator shall notify the Commission not later than 30 days before construction.

(3) For installation of any permanent breakout tank, an operator shall notify the Commission not later than 30 days before installation. For installation of mobile, temporary, or prefabricated breakout

tanks, an operator shall notify the Commission upon placing the mobile, temporary, or prefabricated breakout tank in service.

(4) For relocated or replacement construction on liquified petroleum gas distribution systems, natural gas distribution systems, or master meter systems less than three miles in length, no construction notification is required. For relocated or replacement construction on liquified petroleum gas distribution systems, natural gas distribution systems, or master meter systems at least three miles in length but less than 10 miles in length, an operator shall either:

(A) notify the Commission not later than 30 days before construction by filing a Form PS-48 for every relocated or replacement construction; or

(B) provide to the Commission a monthly report that reflects all known projects planned to be completed in the following 12 months, all projects that are currently in construction, and all projects completed since the prior monthly report. The report should provide the status of each project, the city and county of each project, a description of each project, and the estimated starting and ending date.

(5) For the construction of a new liquefied petroleum gas distribution system, natural gas distribution system, or master meter system less than 10 miles in length in a new subdivision or that results in a new distribution system ID, an operator shall either:

(A) notify the Commission not later than 30 days before construction by filing a Form PS-48 for every initial construction; or

(B) provide to the Commission a monthly report that reflects all known projects planned to be completed in the following 12 months, all projects that are currently in construction, and all projects completed since the prior monthly report. The report should provide the status of each project, the city and county of each project, a description of each project, and the estimated starting and ending date.

(6) For construction of a sour gas pipeline and/or pipeline facilities, as defined in §3.106 of this title (relating to Sour Gas Pipeline Facility Construction Permit), an operator shall notify the Commission not later than 30 days before construction by filing Form PS-48 and Form PS-79.

(7) Pipelines subject to §8.110 of this title (relating to Gathering Pipelines) are exempt from the construction notification requirement.

(b) Any of the notifications required by subsection (a) of this section, unless an operator elects to use the alternative notification allowed by subsection (a)(4) of this section, shall be made by filing with the Commission Form PS-48 stating the proposed originating and terminating points for the pipeline, counties to be traversed, size and type of pipe to be used, type of service, design pressure, and length of the proposed line. If a notification is not feasible because of an emergency, an operator must notify the Commission as soon as practicable. A Form PS-48 that has been filed with the Commission shall expire if construction is not commenced within eight months of date the report is filed. An operator may submit one extension, which will keep the report active for an additional six months. After one extension, Form PS-48 will expire.

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SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §§8.201, 8.205, 8.206, 8.209, 8.210, 8.225, 8.230, 8.235, 8.240

Statutory Authority: The Commission adopts the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, *et seq.*; and Texas Utilities Code, §§121.201-121.211, 121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

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SUBCHAPTER D. REQUIREMENTS FOR HAZARDOUS LIQUIDS AND CARBON DIOXIDE PIPELINES ONLY

16 TAC §8.301, §8.315

Statutory Authority: The Commission adopts the amendments under Texas Natural Resources Code, §§81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, *et seq.*; and Texas Utilities Code, §§121.201-121.211, 121.213-121.214; §121.251 and §121.253, §§121.5005-121.507; which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

§8.301. *Required Records and Reporting.*

(a) Accident reports. In the event of any failure or accident involving an intrastate pipeline facility from which any hazardous liquid or carbon dioxide is released, if the failure or accident is required to be reported by 49 CFR §§195.50 or 195.52, the operator shall also report to the Commission as follows.

(1) Accidents involving crude oil. In the event of an accident involving crude oil, the operator shall:

(A) notify the Division, which shall notify the Commission's appropriate Oil and Gas district office, by telephone to the Commission's emergency line at (512) 463-6788 at the earliest practicable moment but no later than one hour following confirmed discovery of the accident and include the following information:

- (i) company/operator name;
- (ii) location of accident;
- (iii) time and date of accident;
- (iv) fatalities and/or personal injuries;
- (v) phone number of operator;
- (vi) telephone number of operator;
- (vii) telephone number of the operator's on-site person;

(viii) other significant facts relevant to the accident, such as ignition, explosion, rerouting of traffic, evacuation of any building, and media interest; and

(B) following the initial telephonic report for accidents described in paragraph (1) of this subsection, the operator shall retain its records and provide to the Commission upon request the applicable written reports submitted to the DOT. Operators of hazardous liquids gathering pipelines regulated by §8.110 of this title (relating to Gathering Pipelines) shall file with the Commission a written report on an accident described in paragraph (1) of this subsection utilizing the applicable form from the DOT within 30 calendar days after the date of the accident.

(2) Accidents involving hazardous liquids, other than crude oil, and carbon dioxide. For accidents involving hazardous liquids, other than crude oil, and carbon dioxide, the operator shall:

(A) notify the Division of such accident by telephone to the Commission's emergency line at (512) 463-6788 at the earliest practicable moment following confirmed discovery (within one hour) and include the information listed in paragraph (1)(A)(i) - (viii) of this subsection; and

(B) within 30 days of discovery of the accident, complete and retain the written report as required by 49 CFR Part 195. An operator shall provide a copy of the accident report to the Commission upon request. Operators of hazardous liquids gathering pipelines regulated by §8.110 of this title shall file with the Commission a written report on an accident described in paragraph (2) of this subsection utilizing the applicable form from the DOT within 30 calendar days after the date of the accident.

(b) Annual report. Each operator shall retain the annual report required by 49 CFR Part 195 for its intrastate systems. An operator shall provide a copy of the annual report to the Commission upon request.

(c) Safety-related condition reports. Each operator shall submit to the Division in writing a safety-related condition report for any condition specified in 49 CFR Part 195.

(d) Facility response plans. An operator required to file an initial or a revised facility response plan, prepared under the Oil Pollution Act of 1990 for all or any part of a hazardous liquid pipeline facility located landward of the coast, with the Department of Transportation is not required to concurrently file the plan with the Commission, but shall retain a copy and provide it to the Commission upon request.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Railroad Commission of Texas

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For further information, please call: (512) 475-1295



CHAPTER 9. LP-GAS SAFETY RULES

The Railroad Commission of Texas (Commission) adopts amendments to the following rules in Subchapter A, General Requirements: §§9.1-9.18, relating to Application of Rules, Severability, and Retroactivity; Definitions; LP-Gas Forms; Records; Effect of Safety Violations; License Categories, Container Manufacturer Registration, and Fees; Applications for Licenses, Manufacturer Registrations, and Renewals; Requirements and Application for a New Certificate; Requirements for Certificate Holder Renewal; Rules Examination; Transfer of Employees; Trainees; General Installers and Repairman Exemption; Military Fee Exemption; Penalty Guidelines for LP-Gas Safety Violations; Hearings for Denial, Suspension, or Revocation of Licenses, Manufacturer Registrations, or Certificates; Designation and Responsibilities of Company

Representatives and Operations Supervisors; and Reciprocal Examination Agreements with Other States; §9.21 and §9.22, relating to Franchise Tax Certification and Assumed Name Certificates; and Changes in Ownership, Form of Dealership, or Name of Dealership; §§9.26-9.28, relating to Insurance and Self-Insurance Requirements; Application for an Exception to a Safety Rule; and Reasonable Safety Provisions; §§9.35-9.38, relating to Written Procedure for LP-Gas Leaks; Report of LP-Gas Incident/Accident; Termination of LP-Gas Service; and Reporting Unsafe LP-Gas Activities; §9.41, relating to Testing of LP-Gas Systems in School Facilities; §9.51 and §9.52, relating to General Requirements for LP-Gas Training and Continuing Education; and Training and Continuing Education; and §9.54, relating to Commission-Approved Instructors.

In Subchapter B, LP-Gas Installations, Containers, Appurtenances, and Equipment Requirements, the Commission adopts amendments to §§9.101-9.103, relating to Filings Required for Stationary LP-Gas Installations; Notice of Stationary LP-Gas Installations; and Objections to Proposed Stationary LP-Gas Installations; amendments to §§9.107-9.110, relating to Hearings on Stationary LP-Gas Installations; Interim Approval Order for Stationary LP-Gas Installations; Physical Inspection of Stationary LP-Gas Installations; and Emergency Use of Proposed Stationary LP-Gas Installations; amendments to §§9.113-9.116, relating to Installation and Maintenance; Odorizing and Reports; Examination and Testing of Containers; and Container Corrosion Protection System; §9.126, relating to Appurtenances and Equipment; §§9.129-9.132, relating to Manufacturer's Nameplate and Markings on ASME Containers; Commission Identification Nameplates; 200 PSIG Working Pressure Stationary Vessels; and Sales to Unlicensed Individuals; §§9.134-9.137, relating to Connecting Container to Piping; Unsafe or Unapproved Containers, Cylinders, or Piping; Filling of DOT Containers; and Inspection of Cylinders at Each Filling; §§9.140-9.143, relating to System Protection Requirements; Uniform Safety Requirements; LP-Gas Container Storage and Installation Requirements; and Piping and Valve Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

In Subchapter C, Vehicles, the Commission adopts amendments to §§9.201-9.204, relating to Applicability; Registration and Transfer of LP-Gas Transports or Container Delivery Units; School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; and Maintenance of Vehicles; §9.206, relating to Vehicle Identification Labels; §9.208 relating to Testing Requirements; and §9.211 and §9.212, relating to Markings; and Manifests.

In Subchapter D, Adoption by Reference of NFPA 54 (National Fuel Gas Code), the Commission adopts amendments to §§9.301-9.303, relating to Adoption by Reference of NFPA 54; Clarification of Certain Terms Used in NFPA 54; and Exclusion of NFPA 54, §10.28; new §9.304, relating to Unvented Appliances; amendments to §§9.306-9.308, relating to Room Heaters in Public Buildings; Identification of Converted Appliances; and Installation of Piping; §9.311, relating to Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support; and §9.313, relating to Sections in NFPA 54 Adopted with Additional Requirements or Not Adopted. The Commission also adopts the repeal of §9.312, relating to Certification Requirements for Joining Methods.

In Subchapter E, Adoption by Reference of NFPA 58 (LP-Gas Code), the Commission adopts amendments to §9.401 and

§9.403, relating to Adoption by Reference of NFPA 58; and Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements.

The Commission adopts §§9.2, 9.6, 9.7, 9.10, 9.17, 9.51, 9.116, 9.134, 9.301, 9.308, 9.401 and Tables in §§9.15(e), 9.15(k), 9.26, 9.313, and 9.403 with changes and the remaining rules and tables without changes to the proposed text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6134). Rules with changes will be republished.

The Commission received two comments from associations and 25 comments from individuals or companies.

Comments from the Texas Association of Campground Owners (the "association") include: support for the provision in §9.1 that clarifies the rules are not retroactive; support for the retention of the four-year continuing education requirement in §9.52 combined with the adoption of only a portion of NFPA 54 §4, which will greatly reduce costs to association members; and support for amendments to §9.51 providing for a combined test in DOT cylinder filling and motor/mobile fuel. Finally, with regard to amendments in §9.140, the association said it believes the amendments provide needed clarification but also requests that the Commission consider requiring only vertical protection and adding horizontal protection on a case-by-case basis. The Commission appreciates the comments from the association. Because the Commission considers the suggested change outside the scope of this rulemaking, it declines to make any changes to §9.140 at this time.

The Texas Propane Gas Association (TPGA) and 19 commenters oppose removing the definition of "repair to container" in §9.2. The commenters suggest retaining the concept but defining it as "maintenance" rather than repair so that the definition matches the Department of Transportation's definition. The term "repair to container" was removed from the definitions because the term is not used in Chapter 9. The Commission declines to add a definition of maintenance without allowing public comment. The Commission will leave "repair to container" in §9.2 to address commenters' concerns and consider adding a definition of maintenance in a future rulemaking.

TPGA, Amerigas, and 18 other commenters expressed opposition to proposed amendments in §9.10 which require a container delivery unit driver to obtain a bobtail driver certification. Commenters noted that container delivery unit drivers do not have the same responsibilities of a bobtail driver. The Commission's intent was not to require a container delivery unit driver to be certified, but to acknowledge a bobtail driver can operate a container delivery unit. However, to reduce confusion, the Commission has removed the term "container delivery unit" from §9.10.

One comment on §9.116 requested clarification that poly piping is not required to have cathodic protection. The Commission adopts §9.116 with a change to clarify that cathodic protection is required for steel pipelines.

The Commission received 20 comments on §9.126: one from TPGA, one from Amerigas, and 18 from individuals. These comments requested that the Commission also allow for an electronic pneumatic actuator. The Commission considers this change substantive and not directly related to the proposed amendments. Therefore, the Commission will not adopt the suggested change but will consider it for a future rulemaking.

TPGA, Amerigas, and 19 other commenters expressed opposition to §9.134's requirement for a pressure test and leak test be-

cause a leak test is sufficient and in some cases a pressure test can be dangerous. The Commission agrees and adopts §9.134 with a change to remove the pressure test requirement.

TPGA, Amerigas, and 19 other commenters disagree with §9.140's requirement for additional crash protection on storage racks used to store nominal 20-pound DOT portable or any size forklift containers because locked ventilated cages provide adequate protection. These comments also request that the Commission clarify the use of bollards in other installations requiring crash protection. The Commission declines to make changes to §9.140 regarding locked ventilated cages for cylinder storage because NFPA 58 does not address safety concerns for the storage of all caged cylinders. The Commission will consider the request to clarify the use of bollards in a future rulemaking.

TPGA, Amerigas, and 21 other commenters on §9.143 requested that the Commission allow for use of an engineered safety breakaway coupler. This change is outside the scope of the current rulemaking, but the Commission will consider this change in the future.

The Commission received 19 comments on §9.308: one from TPGA and 18 from individuals. These comments oppose the requirement to comply with bonding requirements in NFPA 54 §7.12.2. Also, commenters interpret the proposed amendments to require LP-gas operators to certify that electrical work was done properly. Commenters oppose that requirement as outside their responsibility. The Commission adopts §9.308 with a change to require LP-gas operators to merely verify that a new piping system is bonded when connecting to or supplying the new system with corrugated stainless steel tubing (CSST).

TPGA and 17 commenters on §9.311 oppose eliminating the ability to use ceiling trusses to place piping in chicken houses. The floor of the chicken house is a corrosive environment. It is the Commission's understanding that NFPA 54 does not apply to chicken houses. Brooders must instead meet the requirements of NFPA 58 for piping. Therefore, the amendments would not require brooders to place pipes on the floor of the chicken house.

TPGA's comment and 18 other comments oppose amendments to §9.403 regarding the fire safety analysis in NFPA 58 §6.29.3.3. The commenters request that the Commission continue its exception to this NFPA provision which has been in place since 2001 because to require the fire safety analysis in 9.403 would be redundant. The Commission declines to make the requested change. The amendments only require the fire safety analysis for installations 10,000 gallons or larger. The amendments increase safety for local emergency responders by helping them understand the conditions specific to larger installations. To give operators time to comply, the requirement for a fire safety analysis will not take effect until two years after the effective date of the rule amendments. This two-year delayed effective date was proposed in Table §9.403 and published with the proposed rule amendments in the Texas Register.

Other comments from TPGA and commenters on §9.403 include: (1) requests to remove the provision that grandfathers installations with a single-stage regulator and instead adopt the NFPA's requirement that any installation greater than 100,000 BTU's have a two-stage regulator system; (2) requests to adopt NFPA 58 §§6.22.9.3 and 6.22.9.4, which establish the maximum allowable capacity; (3) requests to adopt NFPA 58 §8.3.1 and Tables 8.3.1(a), 8.3.1(b) and 8.3.2 because without these requirements there is no restriction on the size or amount of LP-gas that can be used or stored in a commercial location;

and (4) requests to adopt NFPA 58 §9.6.2.2 to ensure that there are requirements to address private transportation of containers not in commerce, which fall outside of DOT's jurisdiction. The Commission agrees with item (1) and adopts Table 9.403 with revisions such that NFPA 58 6.10.2.3 is adopted with changes to prohibit single stage regulators in fixed piping systems except for installations covered in 6.10.2.4. The Commission notes that the cylinders referenced in the NFPA sections in item (2) are outside the Commission's jurisdiction. Therefore, the Commission declines to adopt those sections of the NFPA. The Commission also declines to adopt NFPA 58 §8.3.1 and Tables 8.3.1(a), 8.3.1(b) and 8.3.2 as requested in item (3). The current version of Chapter 9 also does not adopt these sections of the NFPA by reference. By not adopting NFPA 58 §8.3.1 and its tables the Commission prohibits storage of any container inside a building frequented by the public, which addresses the concern raised in the comments. The Commission agrees with item (4) and adopts Table 9.403 with a change such that the existing language is retained and the proposed changes are removed.

TPGA and 16 other commenters on §9.403 oppose adoption of NFPA 58 Chapter 15, which would require an Operations and Maintenance Manual for storage over 10,000 gallons. The manual should be a business decision, not a Commission requirement. The Commission disagrees. The amendments adopt NFPA 58 Chapter 15 to increase safety at large installations by documenting operating procedures for transferring product, including actions to be taken in an unintended release of product, and procedures for maintaining the mechanical integrity of the system. The Commission notes that the requirement for an operations and maintenance manual will not go into effect until one year after the effective date of the amendments to §9.403. The one-year delayed effective date was proposed in Table 9.403 and published in the Texas Register with the proposed rule amendments. NFPA 58 Chapter 15, specifically 15.1 through 15.3.2.2, includes provisions addressing the required content of operations and maintenance manuals.

The Commission adopts the amendments, new rule and repeal to update and clarify the Commission's liquefied petroleum gas (LP-gas) rules. Amendments also implement changes from the 86th Legislative Session. House Bill 2714 removed the requirement that manufacturers of LP-gas containers obtain a license from the Commission and instead requires registration with the Commission. Adopted amendments to reflect this statutory change are found in §§9.2, 9.4-9.7, 9.15, 9.16, 9.21, 9.22, and 9.26. Operators will not be required to comply with changes directly related to manufacturer registrations until June 1, 2020 to allow Commission programming efforts to be completed. Sections 9.6 and 9.7 are adopted with a change to specify the June 1, 2020 effective date. Tables 9.15(e) and 9.15(k), are adopted with changes to add rows and correct row and NFPA references.

Adopted amendments also reflect changes made to the National Fire Protection Association (NFPA) standards since Chapter 9 was last amended. These amendments are adopted with an effective date of September 1, 2020. Amendments reflecting NFPA updates are found in §§9.1, 9.7, 9.8, 9.35, 9.51, 9.101, 9.113, 9.116, 9.129, 9.131, 9.135, 9.136, 9.137, 9.140, 9.141, 9.142, 9.143, 9.206, 9.211, 9.301, 9.302, 9.303, 9.306, 9.307, 9.308, 9.311, 9.313, 9.401, and 9.403. The repeal of §9.312 is also adopted to reflect NFPA changes. Section 9.116 is adopted with a change to clarify when cathodic protection is required. Section 9.301 is adopted with changes to reflect the adoption of

new NFPA versions effective September 1, 2020. Section 9.308 is adopted with a change to require LP-gas operators to merely verify that a new piping system is bonded when connecting to or supplying the new system with corrugated stainless steel tubing (CSST). The table in §9.313 is adopted with minor changes to correct errors in the proposed version. Section 9.401 is adopted with changes to reflect the adoption of new NFPA versions effective September 1, 2020. The table in §9.403 is also adopted with changes due to comments as described above.

The remaining amendments are non-substantive and clarify existing language, correct outdated language such as incorrect division and department names, update references to other Commission rules, and ensure language throughout Chapter 9 is consistent. Clarifying changes include amendments to improve readability such as removing repetitive language, adding internal cross references, and including language from a referenced section (e.g., a fee amount) to give the reader better access to applicable requirements.

Clarifying amendments include, but are not limited to, amendments in §§9.2, 9.3, 9.5-9.11, 9.13, 9.17, 9.26, 9.51, 9.52, 9.54, 9.101, 9.109, 9.126, 9.132, 9.202, and 9.304. A brief summary of each of these clarifications is included below.

Amendments to §9.2 remove definitions of terms that no longer appear in Chapter 9 or are only used within one section and, therefore, do not need to be defined. The amendments add definitions of "registered manufacturer" and "service station," as those terms are now used throughout the chapter, and clarify several existing definitions. Section 9.2 is adopted with a change to retain the definition of "repair to container" as discussed in the comment summary above.

Amendments in §9.3 remove the list of official forms from the rule language to ensure consistency with other chapters. All Commission forms are now located on the Commission's website. The amendments also specify the form amendment and adoption process, which is consistent with forms referenced in other Commission chapters.

Amendments in §9.5 include changes to implement the registration requirement from House Bill 2714. "Manufacturer registration" is included alongside references to applications for license and exemptions. However, the amendments also condense the list of potential applicants and use "applicant" when possible to encompass all types of people seeking Commission authorization to conduct LP-gas related activities. In addition, the amendments clarify when certain violations of a person who holds a position of ownership or control in the applicant will be attributed to an applicant. The intent of this provision is the same; the amendments merely remove unnecessary language and reorganize the provision to make it more straightforward.

Section 9.6 is adopted with a change to specify that operators will not be required to comply with changes directly related to manufacturer registrations until June 1, 2020. Generally, amendments adopted in §9.6 update license categories to include licenses currently offered by the Commission, including Categories A1 and A2. The amendments also clarify the Category D and Category I licenses. For example, the amendments remove language related to the service and repair of an LP-gas appliance not required to be vented to the atmosphere. This language was moved to new §9.304, relating to Unvented Appliances, to reduce confusion. Finally, amendments to §9.6 implement House Bill 2714. These provisions remove language related to manufacture and fabrication from existing license categories and add

new subsection (d) which states that a container manufacturer registration authorizes the manufacture, assembly, repair, testing and sale of LP-gas containers. The original registration fee is \$1,000; the renewal fee is \$600.

Section 9.7 is also adopted with a change to specify that operators will not be required to comply with changes directly related to manufacturer registrations until June 1, 2020. Generally, amendments adopted in §9.7 clarify license requirements and reorganize the section to group related requirements together and remove repetitive language that is contained within other rules. An amendment to subsection (a) reflects NFPA updates. New subsection (h) contains the requirements for obtaining a registration authorizing the manufacture of containers. Subsection (i) details the steps the Alternative Fuels Safety Department (AFS) follows to review and approve license and registration applications. Finally, amendments in §9.7 add "registered manufacturer" in several subsections to implement House Bill 2714.

Amendments in §9.8 move language from §9.7 regarding requirements for individuals who perform work, directly supervise LP-gas activities, or are employed in any capacity requiring contact with LP-gas. The amendments also ensure "certificate" and "certificate holder" are used throughout §9.8 instead of using "certificate," "certificate holder," "certified," and "certification" inconsistently. Corresponding changes are also made in other sections for consistency.

Amendments in §9.9 clarify requirements for certificate renewal and steps to renew a lapsed certificate.

Section 9.10 is adopted with a change to remove the term "container delivery unit" from the provision related to bobtail driver examinations. Amendments adopted in §9.10 add language from §9.7 and §9.8 that an individual who passes the applicable examination with a score of at least 75% will become a certificate holder. The amendments also clarify where and when examinations are available and what an examinee must bring to the exam site. Further, the amendments incorporate the management-level examinations and their descriptions into §9.10(d)(2) instead of including those descriptions in a table. Finally, the amendments clarify the process for obtaining a management-level certificate.

Amendments in §9.11 change the title to "Transfer of Employees" to more accurately describe the rule's contents. The amendments also update the process for licensees who hire certificate holders, including allowing notification to the Commission to include only the last four digits of the employee's Social Security Number.

Amendments in §9.13 simplify the name of an exempt individual's proof of exemption such that "registration/examination exemption certificate" is changed to "exemption card." Amendments also update department names and other references and remove repetitive language from other sections.

Amendments in §9.17(a) clarify filing requirements for outlets. The amendments change "termination" to "conclusion of employment" to better communicate AFS's intent for when a licensee must notify AFS of a company representative's or operations supervisor's departure. The amendments in subsection (d) update manual requirements to contemplate the use of electronic manuals in addition to printed manuals. The amendments also reorganize the section so that related requirements are found in the same subsection or paragraph. Section 9.17(a)(7) is adopted with a change to correct a typographical error in the proposed language.

Amendments in §9.26 incorporate insurance requirements for registered manufacturers. Table 9.26(a) is adopted with a change to incorporate rule requirements for manufacturers into the table.

Section 9.51 is adopted with a change to remove the dispenser operator exam. The exam was not added in the proposed amendments to §9.10 and was not intended to be included in §9.51. Other amendments in §9.51 move applicable language into §9.51 from other sections or tables. The amendments update subsection (j) to reflect the Commission's online registration process and allow an individual to register for a course using only the last four digits of his or her Social Security Number. Finally, amendments in §9.51 update department names and incorporate changes to reflect amendments in other sections.

Amendments in §9.52 move language from a table into the rule. Further, the amendments clarify the process for individuals who fail to complete required training; remove dates that have already passed and thus are no longer applicable; and clarify how much credit a certificate holder can receive for an approved CETP course.

Amendments to §9.54 include general updates and clarifications. The amendments in subsection (h) specify the process for renewal of an outside instructor approval and what happens upon failure to renew. Amendments in subsection (i) detail the process for outside instructors when AFS revises its course materials. The amendments in subsection (l) remove language requiring AFS to send information related to complaints through certified mail.

Amendments to §9.101 remove language related to local requirements due to Texas Natural Resources Code §113.054, which was added by the legislature in 2011. Amendments also make minor updates and reorganize parts of the section for clarity.

Amendments in §9.109 incorporate new terminology used by AFS such that a "safety rule violation" is now called a "non-compliance item."

Amendments in §9.126 incorporate specific requirements for ASME containers with an individual water capacity of over 4,000 gallons. These requirements were moved from Table §9.403 to simplify the table.

Amendments in §9.132 incorporate clarifying language from Texas Natural Resources Code §113.081(a).

Amendments in §9.134 allow a licensee to connect to piping installed by an unlicensed person provided the licensee has verified that the piping is free of leaks and has been installed according to the rules in Chapter 9. Section 9.134 is adopted with a change to remove the requirement for a pressure test in addition to a leak check.

Amendments in §9.202, in addition to general updates and clarifications, clarify existing filing requirements for registering an LP-gas transport or container delivery unit. The amendments align Commission rules with U.S. Department of Transportation requirements.

Finally, new §9.304 contains language moved from §9.6 related to the Category D license. The section exempts certain individuals who service, install, and repair LP-gas appliances not required to be vented to the atmosphere from the requirement to obtain a Category D license.

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.1 - 9.18, 9.21, 9.22, 9.26 - 9.28, 9.35 - 9.38, 9.41, 9.51, 9.52, 9.54

The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §113.0815, which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission; and Texas Natural Resources Code §113.082, which authorizes the Commission to adopt rules establishing license categories for LP-gas activities.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.0815, and 113.082.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) AFS--The Commission's Alternative Fuels Safety Department within the Commission's Oversight and Safety Division.

(2) Advanced field training (AFT)--The final portion of the training or continuing education requirements in which an individual shall successfully perform the specified LP-gas activities in order to demonstrate proficiency in those activities.

(3) AFT materials--The portion of a Commission training module consisting of the four sections of the Railroad Commission's LP-Gas Qualifying Field Activities, including General Instructions, the Task Information, the Operator Qualification Checklist, and the Railroad Commission/Employer Record.

(4) Aggregate water capacity (AWC)--The sum of all individual container capacities measured by weight or volume of water which are placed at a single installation location.

(5) Bobtail driver--An individual who operates an LP-gas cargo tank motor vehicle of 5,000 gallons water capacity or less in metered delivery service.

(6) Breakaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a breakaway device.

(7) Certificate holder--An individual:

(A) who has passed the required management-level qualification examination, pursuant to §9.10 of this title (relating to Rules Examination);

(B) who has passed the required employee-level qualification examination pursuant to §9.10 of this title;

(C) who holds a current reciprocal examination exemption pursuant to §9.18 of this title (relating to Reciprocal Examination Agreements with Other States); or

(D) who holds a current examination exemption certificate pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption).

(8) Certified-- Authorized to perform LP-gas work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

(9) CETP--The Certified Employee Training Program offered by the Propane Education and Research Council (PERC), the National Propane Gas Association (NPGA), or their authorized agents or successors.

(10) Commercial installation--An LP-gas installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, bulk storage facility, convalescent home, hospital, cylinder exchange operation, service station, forklift refueling facility, private motor/mobile fuel cylinder filling operation, a microwave tower, or a public or private agricultural installation.

(11) Commission--The Railroad Commission of Texas.

(12) Company representative--The individual designated to the Commission by a license applicant or a licensee as the principal individual in authority and, in the case of a licensee other than a Category P licensee, actively supervising the conduct of the licensee's LP-gas activities.

(13) Container delivery unit--A vehicle used by an operator principally for transporting LP-gas in cylinders.

(14) Continuing education--Courses required to be successfully completed at least every four years by certificate holders to maintain certification.

(15) Director--The director of AFS or the director's delegate.

(16) DOT--The United States Department of Transportation.

(17) Employee--An individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, on a full-time or permanent basis, and owner-employees.

(18) Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LP-gas installation.

(19) Leak grades--An LP-gas leak that is:

(A) a Grade 1 leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous; or

(B) a Grade 2 leak that is recognized as being nonhazardous at the time of detection, but requires a scheduled repair based on a probable future hazard.

(20) Licensed--Authorized by the Commission to perform LP-gas activities through the issuance of a valid license.

(21) Licensee--A person which has applied for and been granted an LP-gas license by the Commission, or who holds a master or journeyman plumber license from the Texas State Board of Plumbing Examiners or a Class A or B Air Conditioning and Refrigeration Contractors License from the Texas Department of Licensing and Regulation and has properly registered with the Commission.

(22) LP-Gas Safety Rules--The rules adopted by the Railroad Commission in the Texas Administrative Code, Title 16, Part 1, Chapter 9, including any NFPA or other documents adopted by reference. The official text of the Commission's rules is that which is on file with the Secretary of State's office and available at the Secretary of State's web site or the Commission's web site.

(23) LP-gas system--All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.

(24) Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.

(25) Mobile fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(26) Mobile fuel system--An LP-gas system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(27) Motor fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.

(28) Motor fuel system--An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.

(29) Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of ASTM International (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."

(30) Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)

(31) Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas activities and is authorized by the licensee to implement operational changes.

(32) Outlet--A site operated by an LP-gas licensee from which any regulated LP-gas activity is performed.

(33) Outside instructor--An individual, other than a Commission employee, approved by AFS to teach certain LP-gas training or continuing education courses.

(34) Person--An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.

(35) Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.

(36) Property line--The boundary which designates the point at which one real property interest ends and another begins.

(37) Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding

school buses and mass transit or special transit vehicles), or airport courtesy vehicles.

(38) **Recreational vehicle**--A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle.

(39) **Registered manufacturer**-- A person who has applied for and been granted a registration to manufacture LP-gas containers by the Commission.

(40) **Repair to container**--The correction of damage or deterioration to an LP-gas container, the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(41) **Rules examination**--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current rules in this chapter.

(42) **School**--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(43) **School bus**--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(44) **Self-service dispenser**--A listed device or approved equipment in a structured cabinet for dispensing and metering LP-gas between containers that must be accessed by means of a locking device such as a key, card, code, or electronic lock, and which is operated by a certified employee of an LP-gas licensee or an ultimate consumer trained by an LP-gas licensee.

(45) **Service station**--An LP-gas installation that, for retail purposes, operates a dispensing station and/or conducts cylinder filling activities.

(46) **Special transit vehicle**--A vehicle designed with limited passenger capacity which is used by a mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(47) **Specification unit**--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Nonspecification unit" in this section.)

(48) **Subframing**--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(49) **Trainee**--An individual who has not yet taken and passed an employee-level rules examination.

(50) **Training**--Courses required to be successfully completed as part of an individual's requirements to obtain or maintain certain certificates.

(51) **Transfer system**--All piping, fittings, valves, pumps, compressors, meters, hoses, bulkheads, and equipment utilized in transferring LP-gas between containers.

(52) **Transport**--Any bobtail or semitrailer equipped with one or more containers.

(53) **Transport driver**--An individual who operates an LP-gas trailer or semi-trailer equipped with a container of more than 5,000 gallons water capacity.

(54) **Transport system**--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(55) **Ultimate consumer**--A person who buys a product to use rather than for resale.

§9.6. License Categories, Container Manufacturer Registration, and Fees.

(a) A prospective licensee may apply to AFS for one or more licenses specified in subsection (b) of this section. Beginning June 1, 2020, a prospective container manufacturer may apply to AFS for a container manufacturer registration specified in subsection (d) of this section. Prior to June 1, 2020, container manufacturers must be licensed as Category A, A1, or A2 in order to manufacture containers in the state of Texas. Fees required to be paid shall be those established by the Commission and in effect at the time of application or renewal and shall be paid at the time of application or renewal.

(b) The license categories and fees are as follows.

(1) A Category A license for container assembly and repair authorizes the assembly, repair, installation, subframing, testing, and sale of ASME or DOT LP-gas containers, including LP-gas motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems. A Category A license includes all activities covered by a Category A1 and Category A2 license. The original license fee is \$1,000; the renewal fee is \$600.

(2) A Category A1 license for ASME container assembly and repair authorizes the assembly, repair, installation, testing, and sale of ASME containers, including LP-gas motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems. The original license fee is \$1,000; the renewal fee is \$600.

(3) A Category A2 license for U.S. Department of Transportation (DOT) container assembly and repair authorizes the assembly, repair, installation, subframing, testing, and sale of LP-gas DOT containers, including LP-gas motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems. The original license fee is \$1,000; the renewal fee is \$600.

(4) A Category B license for transport outfitters authorizes the subframing, testing, and sale of LP-gas transport containers, the testing of LP-gas storage containers, the installation, testing, and sale of LP-gas motor or mobile fuel containers and systems, and the installation and repair of transport systems and motor or mobile fuel systems. The original license fee is \$400; the renewal fee is \$200.

(5) A Category C license for carriers authorizes the transportation of LP-gas by transport, including the loading and unloading of LP-gas, and the installation and repair of transport systems. The original license fee is \$1,000; the renewal fee is \$300.

(6) A Category D license for general installers and repairmen authorizes the sale, service, and installation of containers, and the service, installation, and repair of piping and appliances. A Category D license does not authorize the installation of motor fuel containers, motor fuel systems, recreational vehicle containers, or recreational vehicle systems. The original license fee is \$100; the renewal fee is \$70. Persons with certain licenses issued by the Texas State Board of Plumbing Examiners or the Texas Department of Licensing and Regulation may register with AFS as described in §9.13 of this title (relating to General Installers and Repairman Exemption).

(7) A Category E license for retail and wholesale dealers authorizes the storage, sale, transportation, and distribution of LP-gas at retail and wholesale dealers, and all other activities included in this section, except the manufacture, fabrication, assembly, repair, subframing, and testing of LP-gas containers, and except the sale and installation of LP-gas motor or mobile fuel systems that service an engine with a rating of more than 25 horsepower. The original license fee is \$750; the renewal is \$300.

(8) A Category F license for cylinder filling authorizes the operation of a cylinder filling facility, including cylinder filling, the sale of LP-gas in cylinders, and the replacement of cylinder valves. The original license fee is \$100; the renewal fee is \$50.

(9) A Category G license for dispensing stations authorizes the operation of LP-gas dispensing stations filling ASME containers designed for motor or mobile fuel. The original license fee is \$100; the renewal is \$50.

(10) A Category H license for cylinder dealers authorizes the transportation and sale of LP-gas in cylinders. The original license fee is \$1,000; the renewal is \$300.

(11) A Category I license for service stations and cylinder filling authorizes any cylinder activity set out in Category F and dispensing station operations set out in paragraph (9) of this subsection. A Category I license does not authorize the transportation of LP-gas. The original license fee is \$150; the renewal is \$70.

(12) A Category J license for service stations and cylinder facilities authorizes the operation of a cylinder filling facility, including cylinder filling and the sale, transportation, installation, and connection of LP-gas in cylinders, the replacement of cylinder valves, and the operation of an LP-gas service station as set out in Category G. The original license fee is \$1,000; the renewal is \$300.

(13) A Category K license for distribution systems authorizes the sale and distribution of LP-gas through mains or pipes, and the installation and repair of LP-gas systems. The original license fee is \$1,000; the renewal is \$300.

(14) A Category L license for engine and mobile fuel authorizes the sale and installation of LP-gas motor or mobile fuel containers, and the sale and installation of LP-gas motor or mobile fuel systems. The original license fee is \$100; the renewal is \$50.

(15) A Category M license for recreational vehicle installers and repairmen authorizes the sale, service, and installation of recreational vehicle containers, and the installation, repair, and service of recreational vehicle appliances, piping, and LP-gas systems, including recreational vehicle motor or mobile fuel systems and containers. The original license fee is \$100; the renewal is \$70.

(16) A Category N license for manufactured housing installers and repairmen authorizes the service and installation of containers that supply fuel to manufactured housing, and the installation, repair, and service of appliances and piping systems for manufactured housing. The original license fee is \$100; the renewal is \$70.

(17) A Category O license for testing laboratories authorizes the testing of LP-gas containers, LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the containers or systems for LP-gas service, including the necessary installation, disconnection, reconnection, testing, and repair of LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers. The original license fee is \$400; the renewal is \$100.

(18) A Category P license for portable cylinder exchange authorizes the operation of a portable cylinder exchange service, where the sale of LP-gas is within a portable cylinder with an LP-gas capacity not to exceed 21 pounds, where the portable cylinders are not filled on site, and where no other LP-gas activity requiring a license is conducted. The original license fee is \$100; the renewal fee is \$50.

(c) A military service member, military veteran, or military spouse shall be exempt from the original license fee pursuant to the re-

quirements in §9.14 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal or transport registration fees specified in §9.7 and §9.202 of this title (relating to Applications for Licenses, Manufacturer Registrations, and Renewals; and Registration and Transfer of LP-Gas Transports or Container Delivery Units, respectively).

(d) A container manufacturer registration authorizes the manufacture, assembly, repair, testing and sale of LP-gas containers. The original registration fee is \$1,000; the renewal fee is \$600.

§9.7. *Applications for Licenses, Manufacturer Registrations, and Renewals.*

(a) In addition to complying with NFPA 54 §4.1, no person may engage in any LP-gas activity until that person has obtained a license from the Commission authorizing the LP-gas activities, except as follows:

(1) A person is exempt from licensing under Texas Natural Resources Code §113.081(b) but is required to obtain a license before engaging in any LP-gas activities in commerce or in business.

(2) A state agency or institution, county, municipality, school district, or other governmental subdivision is exempt from licensing requirements as provided by §113.081(g) if the entity is performing LP-gas activities on its own behalf but is required to obtain a license if performing LP-gas activities for or on behalf of a second party.

(3) An original manufacturer of a new motor vehicle powered by LP-gas, or a subcontractor of a manufacturer who produces a new LP-gas powered motor vehicle for the manufacturer is not subject to licensing requirements but shall comply with all other rules in this chapter.

(4) An ultimate consumer is not subject to licensing requirements if performing LP-gas activities dealing only with the ultimate consumer; however, a license is required to register a transport, bobtail, or cylinder delivery unit. An ultimate consumer's license does not require a fee or a company representative.

(b) An applicant for license shall not engage in any LP-gas activities until it has employed a company representative who meets the requirements of §9.17 of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors), or for Category D applicants only, who meets the requirements of §9.17 of this title or has obtained a General Installers and Repairman Exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption).

(c) Licensees, registered manufacturers, company representatives, and operations supervisors at each outlet shall have copies of all current licenses and/or manufacturer registrations and certificates for employees at that location available for inspection during regular business hours. In addition, licensees and registered manufacturers shall maintain a current version of the rules in this chapter and shall provide access to these rules for each company representative and operations supervisor. The rules shall also be available to employees during business hours.

(d) Licenses and manufacturer registrations issued under this chapter expire one year after issuance at midnight on the last day of the month prior to the month in which they are issued.

(e) If a license or registration expires, the person shall immediately cease LP-gas activities.

(f) An applicant for a new license shall submit to AFS:

(1) a properly completed LPG Form 1 listing all names under which LP-gas related activities requiring licensing are to be conducted and the applicant's properly qualified company representative and the following forms or documents as applicable:

(A) LPG Form 1A if the applicant will operate any outlets pursuant to subsection (g) of this section;

(B) LPG Form 7 and any information requested in §9.202 of this title (relating to Registration and Transfer of LP-Gas Transports or Container Delivery Units) if the applicant intends to register any LP-gas transports or container delivery units;

(C) LPG Form 19 if the applicant will be transferring the operation of an existing bulk plant, service station, cylinder filling, or portable cylinder exchange rack installation from another licensee;

(D) any form required to comply with §9.26 of this title (relating to Insurance and Self-Insurance Requirements);

(E) a copy of the current certificate of account status if required by §9.21 of this title (relating to Franchise Tax Certification and Assumed Name Certificates); and/or

(F) copies of the assumed name certificates if required by §9.21 of this title; and

(2) payment for all applicable fees. If the applicant submits the payment by mail, the payment shall be in the form of a check or money order. If the applicant pays the applicable fee online, the applicant shall submit a copy of the online receipt via mail, email, or fax.

(g) A licensee shall submit LPG Form 1A listing all outlets operated by the licensee.

(1) The licensee shall employ at each outlet an operations supervisor who meets the requirements of §9.17 of this title.

(2) Each outlet shall be listed on the licensee's renewal as specified in subsection (i) of this section.

(h) Beginning June 1, 2020, a prospective container manufacturer may apply to AFS to manufacture LP-gas containers in the state of Texas. Beginning June 1, 2020, a person shall not engage in the manufacture of LP-gas containers in this state unless that person has obtained a container manufacturer's registration as specified in this subsection.

(1) Applicants for container manufacturer registration shall file with AFS LPG Form 1M, and any of the following applicable forms or documents:

(A) any form required by §9.26 of this title;

(B) a copy of current certificate of account status if required by §9.21 of this title;

(C) copies of the assumed name certificates if required by §9.21 of this title;

(D) a copy of current DOT authorization. A registered manufacturer shall not continue to operate after the expiration date of the DOT authorization; and/or

(E) a copy of current ASME Code, Section VIII certificate of authorization or "R" certificate. If ASME is unable to issue a renewed certificate of authorization prior to the expiration date, the manufacturer may request in writing an extension of time not to exceed 60 calendar days past the expiration date. The request for extension shall be received by AFS prior to the expiration date of the ASME certificate of authorization referred to in this section, and shall include a letter or statement from ASME that the agency is unable to issue the renewal certificate of authorization prior to expiration and that a temporary extension will be granted for its purposes. A registered manufacturer shall

not continue to operate after the expiration date of an ASME certificate of authorization until the manufacturer files a current ASME certificate of authorization with AFS or AFS grants a temporary exception.

(2) By filing LPG Form 1M, the applicant certifies that it has read the requirements of this chapter and shall comply with all applicable rules, regulations and adopted standards.

(3) The required fee shall accompany LPG Form 1M. An original registration fee is \$1,000; the renewal fee is \$600.

(A) If submitted by mail, payment shall be by check, money order, or printed copy of an online receipt.

(B) If submitted by email or fax, payment shall be a copy of an online receipt.

(4) If a manufacturer registration expires or lapses, the person shall immediately cease the manufacture, assembly, repair, testing and sale of LP-gas containers in Texas.

(i) AFS will review an application for license or registration to verify all requirements have been met.

(1) If errors are found or information is missing on the application or other documents, AFS will notify the applicant of the deficiencies in writing.

(2) The applicant must respond with the required information and/or documentation within 30 days of the written notice. Failure to respond by the deadline will result in withdrawal of the application.

(3) If all requirements have been met, AFS will issue the license or manufacturer registration and send the license or registration to the licensee or manufacturer, as applicable.

(j) For license and manufacturer registration renewals:

(1) AFS shall notify the licensee or registered manufacturer in writing at the address on file with AFS of the impending license or manufacturer registration expiration at least 30 calendar days before the date the license or registration is scheduled to expire.

(2) The renewal notice shall include copies of applicable LPG Forms 1, 1A, and 7, or LPG Form 1M showing the information currently on file.

(3) The licensee or registered manufacturer shall review and return all renewal documentation to AFS with any necessary changes clearly marked on the forms. The licensee or registered manufacturer shall submit any applicable fees with the renewal documentation.

(4) Failure to meet the renewal deadline set forth in this section shall result in expiration of the license or manufacturer registration.

(5) If a person's license or manufacturer registration expires, that person shall immediately cease performance of any LP-gas activities authorized by the license or registration.

(6) If a person's license or manufacturer registration has been expired for 90 calendar days or fewer, the person shall submit a renewal fee that is equal to 1 1/2 times the renewal fee in §9.6 of this title (relating to License Categories, Container Manufacturer Registration, and Fees).

(7) If a person's license or manufacturer registration has been expired for more than 90 calendar days but less than one year, the person shall submit a renewal fee that is equal to two times the renewal fee.

(8) If a person's license or manufacturer registration has been expired for one year or more, that person shall not renew but shall comply with the requirements for issuance of an original license or manufacturer registration under subsection (f) or (h) of this section.

(9) After verification that the licensee or registered manufacturer has met all requirements for licensing or manufacturer registration, AFS shall renew the license or registration and send the applicable authorization to the licensee or manufacturer.

(k) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person shall pay to AFS a fee that is equal to two times the license renewal fee required by §9.6 of this title.

(1) As a prerequisite to licensing pursuant to this provision, the person shall submit, in addition to an application for licensing, proof of having been in practice and licensed in good standing in another state continuously for the two years immediately preceding the filing of the application;

(2) A person licensed under this provision shall be required to comply with all requirements of licensing other than the examination requirement, including but not limited to the insurance requirements as specified in §9.26 of this title and the continuing education and training requirements as specified in §9.51 of this title (relating to General Requirements for LP-Gas Training and Continuing Education), and §9.52 of this title (relating to Training and Continuing Education).

(l) Applicants for license or license renewal in the following categories shall comply with these additional requirements:

(1) An applicant for a Category B or O license or renewal shall file with AFS a properly completed LPG Form 505 certifying that the applicant will follow the testing procedures indicated. The company representative designated on the licensee's LPG Form 1 shall sign LPG Form 505.

(2) An applicant for Category A, B, or O license or renewal who tests tanks, subframes LP-gas cargo tanks, or performs other activities requiring DOT registration shall file with AFS a copy of any applicable current DOT registrations. Such registration shall comply with Title 49, Code of Federal Regulations, Part 107 (Hazardous Materials Program Procedures), Subpart F (Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers).

§9.10. Rules Examination.

(a) An individual who passes the applicable rules examination with a score of at least 75% will become a certificate holder. AFS will send a certificate to the licensee listed on LPG Form 16. If a licensee is not listed on the form, AFS will send the certificate to the individual's personal address.

(1) Successful completion of any examination shall be credited to and accrue to the individual.

(2) An individual who has been issued a certificate shall make the certificate readily available and shall present it to any Commission employee or agent who requests proof of certification.

(b) An applicant for examination shall bring to the exam site:

(1) a completed LPG Form 16; and

(2) payment of the applicable fee specified in subsection (c) of this section.

(c) An individual who files LPG Form 16 and pays the applicable nonrefundable examination fee may take the rules examination.

(1) Dates and locations of available Commission LP-gas examinations may be obtained in the Austin offices of AFS and on the Commission's web site, and shall be updated at least monthly. Examinations may be conducted at the Commission's AFS Training Center in Austin, between the hours of 8:00 a.m. and 12:00 noon, Monday through Friday, except for state holidays, and at other designated times and locations around the state. Individuals or companies may request in writing that examinations be given in their area. AFS shall schedule its examinations and locations at its discretion.

(2) Except in a case where a conditional qualification has been requested in writing and approved under §9.17(g) of this title (relating to Designation and Responsibilities of Company Representatives and Operations Supervisors), the Category E, F, G, I, and J management-level rules examination shall be administered only in conjunction with the Category E, F, G, I, and J management-level courses of instruction. Management-level rules examinations other than Category E, F, G, I, and J may be administered on any scheduled examination day.

(3) Exam fees.

(A) The nonrefundable management-level rules examination fee is \$70.

(B) The nonrefundable employee-level rules examination fee is \$40.

(C) The nonrefundable examination fee shall be paid each time an individual takes an examination.

(D) Individuals who register and pay for a Category E, F, G, I, or J training course as specified in §9.51(j)(2)(A) of this title (relating to General Requirements for LP-Gas Training and Continuing Education) shall pay the charge specified for the applicable examination.

(E) A military service member, military veteran, or military spouse shall be exempt from the examination fee pursuant to the requirements in §9.14 of this title (relating to Military Fee Exemption). An individual who receives a military fee exemption is not exempt from renewal, training, or continuing education fees specified in §9.9 of this title (relating to Requirements for Certificate Holder Renewal, §9.51 of this title, and §9.52 of this title (relating to Training and Continuing Education).

(4) Time limits.

(A) An applicant shall complete the examination within the time limit specified in this paragraph.

(i) The Category E management-level (closed book), Bobtail employee-level (open book), and Service and Installation employee-level (open book) examinations shall be limited to three hours.

(ii) All other management-level and employee-level examinations shall be limited to two hours.

(B) The examination proctor shall be the official timekeeper.

(C) An examinee shall submit the examination and the answer sheet to the examination proctor before or at the end of the established time limit for an examination.

(D) The examination proctor shall mark any answer sheet that was not completed within the time limit.

(5) The Commission may offer employee-level LP-Gas Transport Driver, DOT Cylinder Filling, and Motor/Mobile Fuel Dispensing examinations in Spanish or English.

(d) This subsection specifies the examinations offered by the Commission.

(1) Employee-level examinations.

(A) The Bobtail Driver examination qualifies an individual to operate a bobtail, to perform all of the LP-gas activities authorized by the Transport Driver, DOT Cylinder Filler, and Motor/Mobile Fuel Filler examinations, and to perform leak checks and pressure tests, light appliances, and adjust regulators and thermocouples. The Bobtail Driver examination does not authorize an individual to connect or disconnect containers, except when performing a pressure test or removing a container from service.

(B) The Transport Driver examination qualifies an individual to operate an LP-gas transport equipped with a container of more than 5,000 gallons water capacity, to load and unload LP-gas, and connect and disconnect transfer hoses. The Transport Driver examination does not authorize an individual to operate a bobtail or to install or repair transport systems.

(C) The On-Road Motor Fuel Technician examination qualifies an individual to install LP-gas motor fuel containers, cylinders, and LP-gas motor fuel systems, and replace container valves on motorized vehicles licensed to operate on public roadways. The On-Road Motor Fuel Technician examination does not authorize an individual to fill LP-gas motor or mobile fuel containers.

(D) The Non-Road Motor Fuel Technician examination qualifies an individual to install LP-gas motor fuel containers, cylinders, and LP-gas motor fuel systems, and replace container valves on vehicles such as industrial forklift trucks and lawnmowers. The Non-Road Motor Fuel Technician examination does not authorize an individual to fill LP-gas motor fuel containers or cylinders.

(E) The Mobile Fuel Technician examination qualifies an individual to install LP-gas mobile fuel containers, cylinders, and LP-gas mobile fuel systems, and replace container valves on mobile fuel equipment such as trailers, catering trucks, mobile kitchens, tar kettles, hot oil units, auxiliary engines and similar equipment. The Mobile Fuel Technician examination does not authorize an individual to fill LP-gas mobile fuel containers or cylinders.

(F) The DOT Cylinder Filler examination qualifies an individual to inspect, requalify, fill, disconnect and connect cylinders, including industrial truck cylinders, and to exchange cylinder valves. The DOT Cylinder Filler examination does not authorize an individual to fill ASME motor or mobile fuel containers.

(G) The Recreational Vehicle Technician examination qualifies an individual to install LP-gas motor or mobile fuel containers, including cylinders, and to install and repair LP-gas systems on recreational vehicles. The Recreational Vehicle Technician examination does not authorize an individual to fill LP-gas containers.

(H) The Service and Installation Technician examination qualifies an individual to perform all LP-gas activities related to stationary LP-gas systems, including LP-gas containers, appliances, and stationary engines. The Service and Installation Technician examination does not authorize an individual to fill containers or operate an LP-gas transport.

(I) The Appliance Service and Installation Technician examination qualifies an individual to perform all LP-gas activities related to appliances, including installing, repairing and converting appliances, installing and repairing connectors from the appliance gas stop

through the venting system, and to perform leak checks on the new or repaired portion of an LP-gas system. The Appliance Service and Installation Technician examination does not authorize an individual to install a container, install or repair piping upstream of and including the appliance gas stop, or to install, repair or adjust regulators.

(J) The Motor/Mobile Fuel Filler examination qualifies an individual to inspect and fill motor or mobile fuel containers on vehicles, including recreational vehicles, cars, trucks, and buses. The Motor/Mobile Fuel Filler examination does not authorize an individual to fill LP-gas cylinders or ASME stationary containers.

(2) Management-level examinations.

(A) The Category A examination qualifies an individual to assemble, repair, install, subframe, test, and sell both ASME and DOT containers and cylinders, including motor or mobile fuel containers and systems, and to repair and install transport and transfer systems.

(B) The Category A-1 examination qualifies an individual to assemble, repair, install, test, and sell ASME containers, including motor or mobile fuel containers and systems, and to repair and install transport and transfer systems.

(C) The Category A-2 examination qualifies an individual to assemble, repair, install, subframe, test, and sell DOT cylinders.

(D) The Category B examination qualifies an individual to subframe, test, and sell transport containers; test LP-gas storage containers; install, test, and sell LP-gas motor or mobile fuel containers and systems; and install and repair transport systems and motor or mobile fuel systems.

(E) The Category C examination qualifies an individual to transport LP-gas in a transport equipped with one or more containers, load and unload LP-gas, and install and repair transport systems.

(F) The Category D examination qualifies an individual to sell, service, and install containers, and to service, install, and repair piping and appliances, excluding motor fuel containers, motor fuel systems, recreational vehicle containers, or recreational vehicle systems.

(G) The Category E examination qualifies an individual to store, sell, transport and distribute LP-gas and perform all other categories of licensed activities except the manufacture, fabrication, assembly, repair, subframing, and testing of LP-gas containers and the sale and installation of LP-gas motor or mobile fuel systems rated at more than 25 horsepower.

(H) The Category F examination qualifies an individual to operate a cylinder-filling facility, including cylinder filling, the sale of LP-gas in cylinders, and the replacement of cylinder valves.

(I) The Category G examination qualifies an individual to operate an LP-gas dispensing station to fill ASME motor or mobile fuel containers.

(J) The Category H examination qualifies an individual to transport and sell LP-gas in cylinders.

(K) The Category I examination qualifies an individual to operate a service station as set out in Category F and G.

(L) The Category J examination qualifies an individual to operate a service station as set out in Category I, transport cylinders as set out in Category H and install and connect DOT cylinders.

(M) The Category K examination qualifies an individual to sell and distribute LP-gas through mains or pipes, and to install and repair LP-gas systems.

(N) The Category L examination qualifies an individual to sell and install both LP-gas motor or mobile fuel containers and fuel systems on engines.

(O) The Category M examination qualifies an individual to sell, service, and install recreational vehicle containers, and to install, repair, and service recreational vehicle appliances, piping, and LP-gas systems, including recreational vehicle motor or mobile fuel systems and containers.

(P) The Category N examination qualifies an individual to service and install containers that supply fuel to manufactured housing, and to install, repair, and service appliances and piping systems for manufactured housing.

(Q) The Category O examination qualifies an individual to test LP-gas containers, motor or mobile fuel systems, transfer systems, and transport systems to determine the safety of the containers or systems for LP-gas service, including the necessary installation, disconnection, reconnection, testing, and repair of LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers.

(R) The Category P examination qualifies an individual to operate a portable cylinder exchange service where LP-gas is sold in portable cylinders whose LP-gas capacity does not exceed 21 pounds, where the portable cylinders are not filled on site, and where no other LP-gas activity requiring a license is conducted.

(e) Within 15 calendar days of the date an individual takes an examination, AFS shall notify the individual of the results of the examination. If the examination is graded or reviewed by a testing service, AFS shall notify the individual of the examination results within 14 days of the date AFS receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, AFS shall notify the individual of the reason for the delay before the 90th day. AFS may require a testing service to notify an individual of the individual's examination results.

(f) Failure of any examination shall immediately disqualify the individual from performing any LP-gas related activities covered by the examination which is failed, except for activities covered by a separate examination which the individual has passed.

(1) Any individual who fails an examination administered by the Commission at the Austin location may retake the same examination one additional time during a business day.

(2) Any subsequent examination shall be taken on another business day, unless approved by the AFS director.

(3) An individual who fails an examination may request an analysis of the individual's performance on the examination.

(g) The Commission shall not issue a certificate to an applicant for a management-level certificate that requires completion of a course of instruction until the applicant completes both the required course of instruction and passes the required management-level rules examination.

(h) An applicant for a management-level certificate shall pass the management-level rules examination within two years after completing a required course of instruction. An applicant who fails to pass such an examination within two years of completing such a course shall reapply as a new applicant.

§9.15. *Penalty Guidelines for LP-Gas Safety Violations.*

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging licensees, certificate holders, registered manufacturers, and other reg-

istrants to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank LP-gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Guidelines This section complies with the requirements of Texas Natural Resources Code, §81.0531. The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of Texas Natural Resources Code, Chapter 113; of rules, orders, licenses, registrations, permits, or certificates relating to LP-gas safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Chapter 113; of rules, orders, licenses, registrations, permits, or certificates relating to LP-gas safety adopted or issued under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

- (1) the person's history of previous violations;
- (2) the seriousness of the previous violations;
- (3) any hazard to the health or safety of the public; and
- (4) the demonstrated good faith of the person charged.

(e) Typical penalties. Regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory limit. Typical penalties for violations of Texas Natural Resources Code, Chapter 113; of rules, orders, licenses, registrations, permits, or certificates relating to LP-gas safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, are set forth in Table 1.

Figure: 16 TAC §9.15(e)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual safety hazards, or that result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation, as shown in Table 2.

Figure: 16 TAC §9.15(f) (No change.)

(g) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may

assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

Figure 1: 16 TAC §9.15(g) (No change.)

Figure 2: 16 TAC §9.15(g) (No change.)

(h) Penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Other sanctions. Depending upon the nature of and the consequences resulting from a violation of the rules in this chapter, the Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.

(k) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations, the circumstances justifying enhancements of a penalty and the amount of the enhancement, and the circumstances justifying a reduction in a penalty and the amount of the reduction.

Figure: 16 TAC §9.15(k)

§9.17. Designation and Responsibilities of Company Representatives and Operations Supervisors.

(a) Each licensee shall have at least one company representative for the license and, in the case of a licensee other than a Category P licensee, at least one operations supervisor for each outlet.

(1) A licensee maintaining one or more outlets shall file LPG Form 1 with AFS listing the physical location of the first outlet and designating the company representative for the license and LPG Form 1A designating the physical location and operations supervisor for each additional outlet.

(2) A licensee may have more than one company representative.

(3) An individual may be operations supervisor at more than one outlet provided that:

(A) each outlet has a designated LP-gas certified employee responsible for the LP-gas activities at that outlet;

(B) the certified employee's and/or operations supervisor's telephone number is posted at the outlet on a sign with lettering at least 3/4-inch high, visible and legible during normal business hours; and

(C) the certified employee and/or the operations supervisor monitors the telephone number and responds to calls during normal business hours.

(4) The company representative may also serve as operations supervisor for one or more of the licensee's outlets provided that the individual meets both the company representative and the operations supervisor requirements in this section.

(5) A licensee shall immediately notify AFS in writing upon conclusion of employment, for whatever reason, of its company representative or any operations supervisor and shall at the same time designate a replacement.

(6) A licensee shall cease all LP-gas activities if it no longer employs a qualified company representative who complies with the Commission's requirements. A licensee shall not resume LP-gas activities until such time as it has a properly qualified company representative or it has been granted a conditional qualification as specified in subsection (e) of this section.

(7) A licensee shall cease LP-gas activities at an outlet if it no longer employs a qualified operations supervisor at that outlet who complies with the Commission's requirements. A licensee shall not resume LP-gas activities at that outlet until such time as it has a properly qualified operations supervisor or it has been granted a conditional qualification as specified in subsection (e) of this section.

(b) Company representative. A company representative shall:

(1) be an owner or employee of the licensed entity, in the case of a licensee other than a Category P licensee;

(2) be the licensee's principal individual in authority and, in the case of a licensee other than a Category P licensee, be responsible for actively supervising all LP-gas activities conducted by the licensee, including all appliance, container, portable cylinder, product, and system activities;

(3) have a working knowledge of the licensee's LP-gas activities to ensure compliance with the rules in this chapter and the Commission's administrative requirements;

(4) pass the appropriate management-level rules examination, or, in the case of an applicant for a Category D license, obtain an exemption as specified in §9.13 of this title (relating to General Installers and Repairman Exemption);

(5) complete any required training and/or continuing education required in §9.51 and §9.52 of this title (relating to General Requirements for LP-Gas Training and Continuing Education, and Training and Continuing Education, respectively);

(6) comply with the work experience or training requirements in subsection (e) of this section, if applicable;

(7) be directly responsible for all employees performing their assigned LP-gas activities, unless an operations supervisor is fulfilling this requirement; and

(8) submit any additional information as deemed necessary by AFS.

(c) Operations supervisors. An operations supervisor, in the case of a licensee other than a Category P licensee, shall:

(1) be an owner or employee of the licensee;

(2) pass the applicable management-level rules examination or, in the case of a Category D license only, obtain an exemption as specified in §9.13 of this title;

(3) complete any required training and/or continuing education required in §9.51 and §9.52 of this title; and

(4) be directly responsible for actively supervising the LP-gas activities of the licensee at the designated outlet.

(d) Category P licensees.

(1) The company representative requirement for a Category P licensee may be satisfied by employing a Category E or J company representative if the Category E or J company representative is authorized by the Category P licensee to remove any employee who does not comply with the rules in this chapter or who performs unsafe LP-gas activities.

(2) In lieu of an operations supervisor requirement for a Category P license, the Category E or J licensee providing the Category P licensee with portable cylinders for exchange shall be required to:

(A) prepare a manual containing, at a minimum, the following:

(i) a description of the basic characteristics and properties of LP-gas;

(ii) an explanation of the various parts of an LP-gas cylinder, including what the purpose of each part is and how to operate the cylinder valve;

(iii) complete instructions on how to properly transport cylinders in vehicles;

(iv) prohibition against moving or installing cylinder cages at any store location;

(v) a prohibition against taking or storing inside a building any cylinders that have or have had LP-gas in them;

(vi) a requirement that all cylinders containing LP-gas be stored in a manner so that the relief valve is in the vapor space of the cylinder;

(vii) a requirement that the employees who handle the cylinders know the location within the store of the manual and know the contents of the manual;

(viii) instructions related to any potential hazards that may be specific to a location, including but not limited to the proper distancing of cylinders from combustible materials and sources of ignition;

(ix) detailed emergency procedures regarding a leaking cylinder, including all applicable emergency contact numbers;

(x) a requirement that any accidents be reported to the Category E or J licensee who prepares the manual, and detailed procedures for reporting any accidents;

(xi) all Commission rules applicable to the Category P license, including the requirement that the Category P licensee is responsible for complying with all such rules;

(xii) all provisions of Subchapter H ("Enforcement") of Chapter 113 of the Texas Natural Resources Code;

(xiii) a detailed description of the training provided to each employee of the Category P licensee who may be engaged in any activities covered by the Category P license; and

(xiv) a page for the signatures, printed names and dates of training for each individual trained at each outlet on this manual.

(B) provide a manual in print or electronic format at each outlet or location of the Category P licensee; and

(C) provide training as to the contents of the manual to each employee who may be engaged in any activities covered by the Category P license at all outlets or locations of the Category P licensee

and maintain records regarding the employees of the Category P licensee who have been trained.

(3) The Category P licensee shall:

(A) ensure that each employee who is involved with the activities covered by the Category P license is knowledgeable about the contents of the manual and has signed and dated the signature page of the manual; and

(B) ensure that each such employee is aware of the location of the manual and can show the manual to employees of the Commission upon request.

(e) Work experience substitution for Category E, F, G, I, and J.

(1) The AFS director may, upon written request, allow a conditional qualification for a Category E, F, G, I, or J company representative or operations supervisor who passes the applicable management-level rules examination provided that the individual attends and successfully completes the next available Category E, F, G, I, or J management-level training course, or a subsequent Category E, F, G, I, or J management-level training course agreed on by the AFS director and the applicant.

(A) The written request shall include a description of the individual's LP-gas experience and other related information in order that the AFS director may properly evaluate the request.

(B) Applicants for company representative or operations supervisor who have less than three years' experience or experience which is not applicable to the category for which the individual is applying shall not be granted a conditional qualification and shall comply with the training requirements in §9.52 of this title prior to AFS issuing a certificate.

(2) If the individual fails to complete the training requirements within the time granted by the AFS director, the conditional qualification shall immediately be voided and the individual shall immediately cease all LP-gas activities granted by the conditional qualification.

§9.26. Insurance and Self-Insurance Requirements.

(a) A licensee or registered manufacturer shall not perform any activity authorized by its license or registration under §9.6 of this title (relating to License Categories, Container Manufacturer Registration, and Fees) unless insurance coverage required by this section is in effect. LP-gas licensees, registered manufacturers, or applicants for license or manufacturer registration shall comply with the minimum amounts of insurance specified in Table 1 of this section or with the self-insurance requirements in subsection (i) of this section, if applicable. Registered manufacturers are not eligible for self-insurance. Before AFS grants or renews a manufacturer registration, an applicant for a manufacturer registration shall submit the documents required by paragraph (1) of this subsection. Before AFS grants or renews a license, an applicant for a license shall submit either:

Figure: 16 TAC §9.26(a)

(1) An insurance Acord™ form; or any other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information. The forms must be issued by an insurance company authorized or accepted by the Texas Department of Insurance; or

(2) properly completed documents demonstrating the applicant's compliance with the self-insurance requirements set forth in subsection (j) of this section.

(b) Each licensee or registered manufacturer shall file LPG Form 999 or other written notice with AFS at least 30 calendar days

before the cancellation of any insurance coverage. The 30-day period commences on the date the notice is actually received by AFS.

(c) A licensee or applicant for a license that does not employ or contemplate employing any employee to be engaged in LP-gas related activities in Texas may file LPG Form 996B in lieu of filing a workers' compensation insurance form, including employer's liability insurance, or alternative accident and health insurance coverage. The licensee or applicant for a license shall file the required insurance form with AFS before hiring any person as an employee engaged in LP-gas related work.

(d) A licensee, applicant for a license, or an ultimate consumer that does not operate or contemplate operating a motor vehicle equipped with an LP-gas cargo container or does not transport or contemplate transporting LP-gas by vehicle in any manner may file LPG Form 997B in lieu of a motor vehicle bodily injury and property damage insurance form, if this certificate is not otherwise required. The licensee or applicant for a license shall file the required insurance form with AFS before operating a motor vehicle equipped with an LP-gas cargo container or transporting LP-gas by vehicle in any manner.

(e) A licensee, registered manufacturer, or applicant for a license or manufacturer registration that does not engage in or contemplate engaging in any LP-gas activities that would be covered by completed operations or products liability insurance, or both, may file LPG Form 998B in lieu of a completed operations and/or products liability insurance form. The licensee, registered manufacturer, or applicant for a license or manufacturer registration shall file the required insurance form with AFS before engaging in any operations that require completed operations and/or products liability insurance.

(f) A licensee, registered manufacturer, or applicant for a license or manufacturer registration that does not engage in or contemplate engaging in any operations that would be covered by general liability insurance may file LPG Form 998B in lieu of filing a general liability insurance form. The licensee, registered manufacturer, or applicant for a license or manufacturer registration shall file the required insurance form with AFS before engaging in any operations that require general liability insurance.

(g) A licensee may protect its employees by obtaining accident and health insurance coverage from an insurance company authorized to write such policies in this state as an alternative to workers' compensation coverage. The alternative coverage shall be in the amounts specified in Table 1 of this section.

(h) A state agency or institution, county, municipality, school district, or other governmental subdivision shall meet the requirements of this section for workers' compensation, general liability, and/or motor vehicle liability insurance. The requirements may be met by filing LPG Form 995 with AFS as evidence of self-insurance, if permitted by the Texas Labor Code, Title 5, Subtitle C, and Texas Natural Resources Code, §113.097.

(i) Self-insurance requirements.

(1) This subsection applies to a licensee's or a license applicant's motor vehicle bodily injury and property damage liability coverage and general liability coverage. A licensee or license applicant shall not elect to self-insure for more than 12 consecutive months, exclusive of the six-month period for which a letter of credit is required to remain in effect pursuant to paragraph (4) of this subsection.

(2) A licensee or license applicant desiring to self-insure shall file with AFS a properly completed LPG Form 28, Notice of Election to Self-Insure and a properly completed LPG Form 28-A, Bank Declarations Regarding Irrevocable Letter of Credit. The licensee or

license applicant shall attach to the LPG Form 28-A any documentation necessary to show that the bank issuing the irrevocable letter of credit meets the requirements in paragraph (5)(E) of this subsection.

(3) The irrevocable letter of credit shall be in an amount that is no less than the total of all minimum insurance coverage amounts required by the Commission in the Table in subsection (a) of this section for every coverage for which the licensee or license applicant seeks to self-insure.

(4) The irrevocable letter of credit shall be valid until the expiration date shown on LPG Form 28, which shall be no sooner than six months after the earlier of either:

- (A) the expiration date of the license; or
- (B) the effective date of insurance coverage.

(5) A letter of credit commemorated by LPG Form 28-A shall:

- (A) be irrevocable during its term;
- (B) be payable to the Commission or Commission's designee in part or in full as directed by the Commission in compliance with an order from state or federal court;
- (C) include a guarantee from the bank that issues the letter of credit (irrevocable confirmed credit);
- (D) not apply to the licensing requirements for worker's compensation insurance including employers liability insurance or alternative accident/health insurance; and
- (E) be issued by a federally insured bank authorized to do business in the State of Texas which meets or exceeds the following requirements:

(i) Bank management shall attest that the bank is not subject to any outstanding written enforcement action, agreement, order, capital directive, or prompt corrective action directive issued by a state or federal bank regulatory agency;

(ii) The bank shall be "well capitalized" as defined in federal bank regulatory statutes with:

- (I) a total risk-based capital ratio of 10% or greater;
- (II) a Tier 1 risk-based capital ratio of 6% or greater; and
- (III) a leverage ratio of 5% or greater.

(iii) The bank shall have received a satisfactory or better rating at its most recent Community Reinvestment Act (CRA) examination by a federal bank regulatory agency;

(iv) The bank management shall attest that the full amount of the letter of credit, when added to other indebtedness of the licensee or applicant for license to the bank, is within the bank's regulatory lending limit; and

(v) The issuing bank shall be in good standing with the State Comptroller's Office regarding the payment of franchise taxes and other obligations to the state.

(6) In addition to the requirements of §9.36 of this title (relating to Report of LP-Gas Incident/Accident), within 30 days of the occurrence of any incident or accident involving the business activities of a self-insured LP-gas licensee that results in property damage or loss and/or personal injuries, the licensee shall notify AFS in writing of the incident. The licensee shall include in the notification a list of the names and addresses of any individuals known to the licensee

who may have suffered losses in the incident. The licensee shall also provide written notice to all such individuals of the licensee's status as being self-insured and of the expiration date of the licensee's letter of credit.

(j) Each licensee or registered manufacturer shall promptly notify AFS of any change in insurance coverage or insurance carrier by filing a properly completed Acord™ form; other form approved by the Texas Department of Insurance that has been prepared and signed by the insurance carrier containing all required information; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in subsection (i) of this section. Failure to promptly notify AFS of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

§9.51. General Requirements for LP-Gas Training and Continuing Education.

(a) In addition to complying with NFPA 58, §§4.4 and 11.2, individuals shall comply with the training and continuing education requirements in this chapter.

(b) Applicants for new certificates, as set forth in §9.8 of this title (relating to Requirements and Application for a New Certificate) and persons holding existing certificates shall comply with the training or continuing education requirements in this chapter. Any individual who fails to comply with the training or continuing education requirements by the assigned deadline may regain certification by paying the nonrefundable course fee and satisfactorily completing an authorized training or continuing education course within two years of the deadline. In addition to paying the course fee, the person shall pay any fee or late penalties to AFS.

(c) The training requirements apply to:

- (1) applicants for Category D, E, F, G, I, J, K, or M management-level certificates; and
- (2) applicants for the following employee-level certifications:
 - (A) bobtail driver;
 - (B) DOT cylinder filler;
 - (C) recreational vehicle technician;
 - (D) service and installation technician;
 - (E) appliance service and installation technician; and
 - (F) motor/mobile fuel filler.

(d) The continuing education requirements apply to the following individuals:

- (1) Category D, E, F, G, I, J, K, and M management-level certificate holders;
- (2) any ultimate consumer who has purchased, leased, or obtained other rights in any LP-gas bobtail, including any employee of such ultimate consumer if that employee drives or in any way operates the equipment on an LP-gas bobtail; and
- (3) individuals holding the following employee-level certifications:
 - (A) bobtail driver;
 - (B) DOT cylinder filler;
 - (C) recreational vehicle technician;
 - (D) service and installation technician;

- (E) appliance service and installation technician; and
- (F) motor/mobile fuel filler.

(e) The training and continuing education requirements do not apply to an individual who:

- (1) drives or fuels a motor vehicle powered by LP-gas as an ultimate consumer;
- (2) fuels motor vehicles as an employee of an ultimate consumer;
- (3) is employed by a state agency, county, municipality, school district, or other governmental subdivision;
- (4) holds a general installers and repairman exemption; or
- (5) holds a management or employee-level certification not specified in subsection (c) or (d) of this section.

(f) Except as provided in §9.41(b) of this title (relating to Testing of LP-Gas Systems in School Facilities), each individual who performs LP-gas activities as an employee of an ultimate consumer or a state agency, county, municipality, school district, or other governmental subdivision shall be properly supervised by his or her employer. Any such individual who is not certified by the Commission to perform such LP-gas activities shall be properly trained by a competent person in the safe performance of such LP-gas activities.

(g) Individual credit. Successful completion of any required training or continuing education course shall be credited to and accrue to the individual.

(h) No partial credit. Individuals attending courses shall receive credit only if they attend the entire course and pay any training or continuing education course fees in full. The Commission shall not award partial credit for partial attendance.

(i) Schedules. Dates and locations of available AFS LP-gas training and continuing education courses can be obtained in the Austin offices of AFS, and on the Commission's web site and shall be updated at least monthly. AFS courses shall be conducted in Austin and in other locations around the state. Individuals or companies may request in writing that AFS courses be taught in their area. AFS shall schedule its courses and locations at its discretion.

(j) Course registration and scheduling.

(1) Registering for a course. To register for a scheduled training or continuing education course, an individual shall complete the online registration process at least seven days prior to the course. AFS shall also accept course registrations via regular mail, electronic mail (e-mail), or facsimile transmission (fax). Such requests shall include the applicant's full name, address, phone number, level (either manager or employee) and category of certification (such as cylinder filling or service and installation), e-mail address, and the name or number, location, and date of the requested course.

(2) Costs for courses.

(A) Each registration for a training course shall require the payment of the applicable nonrefundable course fee as follows:

- (i) \$75 for an eight-hour course;
- (ii) \$150 for the 16-hour Category F, G, I, and J course; and
- (iii) \$750 for the 80-hour Category E course.

(B) The course fees do not include the license or rules examination fees described in §9.6 and §9.10 of this title (relating to

License Categories, Container Manufacturer Registration, and Fees, and Rules Examination, respectively).

(C) Current certificate holders who have paid the annual renewal fee and who want to add a new certification other than Category E, F, G, I or J shall not be required to pay the \$75 course fee.

(D) Continuing education courses shall be offered at no charge to certificate holders who have timely paid the annual certificate renewal fee specified in §9.9 of this title.

(E) Requests for courses where no training or continuing education course credit is given shall be submitted in writing to the AFS training section. The AFS training section may conduct the requested courses at its discretion. The nonrefundable fee for a non-credit course is \$250 if no overnight expenses are incurred by the AFS training section, or \$500 if overnight expenses are incurred. AFS may waive the fee for a non-credit course in cases where the Commission recovers the cost of the course from another source, such as a grant.

(F) AFS may charge reasonable fees for materials for courses using third-party materials.

(3) Course scheduling. AFS shall schedule individuals to attend courses on a first-come, first-served basis, based on when the course fee is paid except as follows:

(A) Priority for attending the 16-hour Category F, G, I, and J course, and the 80-hour Category E course is based on when the course fee is paid.

(B) Priority for attending courses other than the 16-hour Category F, G, I, and J course, and the 80-hour Category E course shall be given to applicants or certificate holders who must comply with training or continuing education requirements by the next May 31 deadline.

(C) If any course has fewer than eight individuals registered within seven calendar days prior to the course, AFS may cancel the course and may reschedule the registered individuals in another course agreed upon by the individuals and the AFS training section. The AFS training section reserves the right to determine the number of course registrants.

(4) If a previously registered individual is unable to attend the course at the time and place for which the individual is registered due to illness or other unforeseen circumstances, another individual from the same company may attend that same course in his or her place.

(5) Applicants who take courses offered by an entity other than AFS shall comply with the registration, fee, and other requirements specified by that entity.

(k) An individual registered to take a course shall bring the following items to the course site:

- (1) a registration confirmation email or fax;
- (2) proof of payment unless exempt from the course fee;

and

(3) documents required in §9.10(b) of this title if one or more examinations will be taken.

(l) Individual applicants or certificate holders shall be responsible for promptly notifying the AFS training section in writing of any discrepancies or errors in the training or continuing education records, and shall notify AFS of any discrepancies or errors in examination records or certificates. In the event of a discrepancy, AFS' records, including due dates, shall be deemed correct unless the individual has copies of applicable documents which clarify the discrepancy.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-1295



SUBCHAPTER B. LP-GAS INSTALLATIONS, CONTAINERS, APPURTENANCES, AND EQUIPMENT REQUIREMENTS

16 TAC §§9.101 - 9.103, 9.107 - 9.110, 9.113 - 9.116, 9.126, 9.129 - 9.132, 9.134 - 9.137, 9.140 - 9.143

The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §113.0815, which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission; and Texas Natural Resources Code §113.082, which authorizes the Commission to adopt rules establishing license categories for LP-gas activities.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.0815, and 113.082.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.116. Container Corrosion Protection System.

(a) In addition to NFPA 58, §§5.2.1.11, 6.8.6.1(I), 6.8.6.2(A), 6.8.6.3(F), 6.11.3.14 and 6.19.2, steel containers and steel piping systems installed underground, partially underground, or as mounded installations on or after March 1, 2014, shall include a corrosion protection system.

(b) Cathodic protection systems installed on or after March 1, 2014, shall be monitored by every licensee servicing the container in accordance with NFPA 58, §6.19.3.1 through 6.19.3.3. Such licensees shall document the test results.

(c) The licensee shall retain documentation of test results in accordance with §9.4 of this title (relating to Records).

(d) Steel containers and piping systems installed underground, partially underground, or as mounded installations on or after March 1, 2014, shall not be filled unless a cathodic protection system is installed in accordance with this section.

§9.134. Connecting Container to Piping.

LP-gas piping shall be installed only by a licensee authorized to perform such installation, a registrant authorized by §9.13 of this title (relating to General Installers and Repairman Exemption), or an individual exempted from licensing as authorized by Texas Natural Resources

Code, §113.081. A licensee shall not connect an LP-gas container or cylinder to a piping installation made by a person who is not licensed to make such installation, except that connection may be made to piping installed by an individual on that individual's single family residential home. A licensee may connect to piping installed by an unlicensed person provided the licensee has verified that the piping is free of leaks and has been installed according to the rules in this chapter, and filed with AFS a completed LPG Form 22, identifying the unlicensed person who installed the LP-gas piping.

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

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SUBCHAPTER C. VEHICLES

16 TAC §§9.201 - 9.204, 9.206, 9.208, 9.211, 9.212

The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §113.0815, which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission; and Texas Natural Resources Code §113.082, which authorizes the Commission to adopt rules establishing license categories for LP-gas activities.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.0815, and 113.082.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Railroad Commission of Texas

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SUBCHAPTER D. ADOPTION BY REFERENCE OF NFPA 54 (NATIONAL FUEL GAS CODE)

16 TAC §§9.301 - 9.304, 9.306 - 9.308, 9.311, 9.313

The Commission adopts the amendments and new rule under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §113.0815, which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission; and Texas Natural Resources Code §113.082, which authorizes the Commission to adopt rules establishing license categories for LP-gas activities.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.0815, and 113.082.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.301. *Adoption by Reference of NFPA 54.*

(a) Effective September 1, 2020, except as modified in the remaining sections of this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association in its 2018 edition of the National Fuel Gas Code, commonly referred to as NFPA 54 or Pamphlet 54. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety, and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) Effective September 1, 2020, the Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 54 which apply to LP-gas activities only. The adopted pamphlets referenced in NFPA 54 are:

(1) NFPA 30A, Code for Motor Fuel Dispenser Facilities and Repair Garages, 2018 edition;

(2) NFPA 37, Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines, 2018 edition;

(3) NFPA 51, Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes, 2018 edition;

(4) NFPA 52, Vehicular Fuel Systems Code, 2016 edition;

(5) NFPA 58, Liquefied Petroleum Gas Code, 2017 edition, as amended in Subchapter E of this chapter (relating to Adoption by Reference of NFPA 58 (LP-Gas Code));

(6) NFPA 70, National Electrical Code, 2017 edition;

(7) NFPA 82, Standard on Incinerators and Waste, and Linen Handling Systems and Equipment, 2014 edition;

(8) NFPA 88A, Standard for Parking Structures, 2015 edition;

(9) NFPA 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 2018 edition;

(10) NFPA 90B, Standard for the Installation of Warm Air Heating and Air Conditioning Systems, 2018 edition;

(11) NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2017 edition;

(12) NFPA 211, Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances, 2016 edition;

(13) NFPA 409, Standard on Aircraft Hangars, 2016 edition;

(14) NFPA 780, Standard for the Installation of Lightning Protection Systems, 2017 edition;

(15) NFPA 853, Standard for the Installation of Station Fuel Cell Power Systems, 2015 edition; and

(16) NFPA 1192, Standard on Recreational Vehicles, 2018 edition.

§9.308. Installation of Piping.

(a) In addition to the requirements of NFPA 54, Chapter 7, Gas Piping Installation, LP-gas piping shall be installed, altered, repaired, pressure tested, and leakage tested only by persons properly certified by the Commission pursuant to §9.10 and §9.13 of this title (relating to Rules Examination, and General Installers and Repairman Exemption, respectively).

(b) Licensees and registrants shall document and retain such documentation of all pressure and leakage tests pursuant to §9.4 of this title (relating to Records).

(c) When connecting to or supplying a new piping system with corrugated stainless steel tubing (CSST), the licensee or registrant shall verify the system is bonded.

(d) In addition to NFPA 58 §5.11.5, licensees and registrants shall retain written proof regarding any current certifications required by the manufacturer for installation and repair methods for CSST, polyethylene, and polyamide pipe and tubing, including heat-fusion.

§9.313. Sections in NFPA 54 Adopted with Additional Requirements or Not Adopted.

Table 1 of this section lists certain NFPA 54 sections which the Commission adopts with additional requirements, changes, or does not adopt in order to address the Commission's rules in this chapter. Figure: 16 TAC §9.313

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Haley Cochran

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16 TAC §9.312

The Commission adopts the repeal under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §113.0815, which requires a person engaging in the manufacture or fabrication of containers to

register with the commission in accordance with rules adopted by the commission; and Texas Natural Resources Code §113.082, which authorizes the Commission to adopt rules establishing license categories for LP-gas activities.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.0815, and 113.082.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. ADOPTION BY REFERENCE OF NFPA 58 (LP-GAS CODE)

16 TAC §9.401, §9.403

The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to promulgate and adopt rules and standards relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; Texas Natural Resources Code §113.0815, which requires a person engaging in the manufacture or fabrication of containers to register with the commission in accordance with rules adopted by the commission; and Texas Natural Resources Code §113.082, which authorizes the Commission to adopt rules establishing license categories for LP-gas activities.

Statutory authority: Texas Natural Resources Code, §§113.051, 113.0815, and 113.082.

Cross reference to statute: Texas Natural Resources Code Chapter 113.

§9.401. Adoption by Reference of NFPA 58.

(a) Effective September 1, 2020, except as modified in this subchapter, the Commission adopts by specific reference the provisions established by the National Fire Protection Association (NFPA) in its 2017 edition of the Liquefied Petroleum Gas Code, commonly referred to as NFPA 58 or Pamphlet 58. Nothing in this section or subchapter shall prevent the Commission, after notice, from adopting additional requirements, whether more or less stringent, for individual situations to protect the health, safety and welfare of the general public. Any documents or parts of documents incorporated by reference into these rules shall be a part of these rules as if set out in full.

(b) Effective September 1, 2020, the Commission also adopts by reference all other NFPA publications or portions of those publications referenced in NFPA 58, §2.1, which apply to LP-gas activities only. The adopted pamphlets referenced in NFPA 58 are:

(1) NFPA 10, Standard for Portable Fire Extinguishers, 2013 edition;

(2) NFPA 13, Standard for the Installation of Sprinkler Systems, 2016 edition;

(3) NFPA 15, Standard for Water Spray Fixed Systems for Fire Protection, 2017 edition;

(4) NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2017 edition;

(5) NFPA 30, Flammable and Combustible Liquids Code, 2015 edition;

(6) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2015 edition;

(7) NFPA 51B, Standard for Fire Prevention in Use of Cutting and Welding Processes, 2014 edition;

(8) NFPA 54, National Fuel Gas Code, 2018 edition, as amended in Subchapter D of this chapter (relating to Adoption by Reference of NFPA 54 (National Fuel Gas Code));

(9) NFPA 55, Standard for the Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks, 2016 edition;

(10) NFPA 59, Utility LP-Gas Plant Code, 2015 edition;

(11) NFPA 70, National Electrical Code, 2017 edition;

(12) NFPA 99, Standard for Health Care Facilities, 2015 edition;

(13) NFPA 101, Life Safety Code, 2015 edition;

(14) NFPA 160, Standard for the Use of Flame Effects Before an Audience, 2016 edition;

(15) NFPA 220, Standard on Types of Building Construction, 2015 edition;

(16) NFPA 1192, Standard on Recreational Vehicles, 2015 edition.

§9.403. Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements.

(a) Table 1 of this section lists certain NFPA 58 sections which the Commission does not adopt because the Commission's corresponding rules are more pertinent to LP-gas activities in Texas, or which the Commission adopts with changed language or additional requirements in order to address the Commission's existing rules. Figure: 16 TAC §9.403

(b) If a section in NFPA 58 refers to another section in NFPA 58 which the Commission has not adopted, or which the Commission has adopted with additional or alternative language, then persons shall comply with the applicable Commission rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 12. COAL MINING REGULATIONS SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS

DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

16 TAC §12.108

The Railroad Commission of Texas (Commission) adopts amendments to §12.108, relating to Permit Fees, with changes to the proposed text as published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4421). The rule will be republished.

The Commission received two comments on the amendments: one from North American Coal Corporation ("NACoal") and one from the Texas Mining and Reclamation Association ("TMRA"). NACoal commented that the regulatory program designed to oversee the coal mine sector should decrease proportionately to the industry it regulates. NACoal recognizes that some previously active mines are still subject to regulatory oversight but that most are in reclamation status, which, in NACoal's opinion, requires significantly less oversight than an active mining operation. NACoal recommended that instead of increasing permit fees the Surface Mining and Reclamation Division (SMRD) should evaluate its regulatory program and decrease inefficiencies such that its budget can be decreased. Similarly, TMRA expressed concern about increased fees at a time when the coal mining industry is experiencing immense pressure. TMRA noted the importance of the Commission working together with industry to optimize the efficiency of the Commission's resources. The Commission appreciates these comments.

The Commission agrees that efficient use of resources is a priority. The Commission also recognizes that the number of active mines is decreasing. Therefore, the Commission has determined it will maintain its current fee structure at this time. As discussed in the proposal preamble, the current fee structure, created by an agreement with industry in 2005, specifies that seven percent of annual fees are based on the number of permits, while 93 percent of annual fees are based on the number of bonded acres. Maintaining the current fee structure until a change is necessary through a future rulemaking will allow the Commission and the mining industry an opportunity to re-evaluate the fee structure to accommodate industry changes.

The Commission amends subsection (b) to remove proposed calendar years. The Commission does not adopt the proposed fee changes in paragraphs (b)(1) and (b)(2).

The Commission adopts the amendment under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations and §134.055, which authorizes the Commission to collect annual fees.

Statutory authority: Texas Natural Resources Code, §134.013 and §134.055.

Cross-reference to statute: Texas Natural Resources Code, §134.013 and §134.055.

§12.108. *Permit Fees.*

(a) Application Fees. Each application for a surface coal mining and reclamation permit or renewal or revision of a permit shall be accompanied by a fee. The initial application fee and the application fee for renewal of a permit may be paid in equal annual installments during the term of the permit. The fee schedule is as follows:

- (1) application for a permit: \$5,000.
- (2) application for revision of a permit: \$500.
- (3) application for renewal of a permit: \$3,000.

(b) Annual Fees. In addition to application fees required by this section, each permittee shall pay to the Commission the following annual fees due and payable not later than March 15th of the year following the calendar year for which these fees are applicable:

- (1) a fee of \$12.85 for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, as shown on the map required by §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans); and
- (2) a fee of \$6,170 for each permit in effect on December 31st of the year.

(c) Fees paid to the Commission under this section shall be deposited in the state treasury and credited to the general revenue fund. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

16 TAC §22.246

The Public Utility Commission of Texas (commission) adopts amendments to §22.246, relating to administrative penalties, with changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5833). The rules will be republished. The amendments implement Senate Bill 1358, 86th Legislature, Regular Session, which modified requirements for notices of violation issued under Public Utility Regulatory Act (PURA) §15.024 in cases where the person to whom the notice was issued does not respond. The amendments also make stylistic updates. These amendments are adopted under Project Number 49875.

A public hearing on the amendments was held at commission offices on October 25, 2019 at 9:00 a.m. No persons made appearances.

The commission received no comments on the proposed amendments.

In adopting this section, the commission makes other minor modifications for stylistic purposes.

These amendments are adopted under §14.002 and §14.052 of the Public Utility Regulatory Act, Tex. Util. Code §(West 2016 and Supp. 2017) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and PURA §15.024, which grants the commission the authority to impose an administrative penalty when the commission finds that a violation has occurred.

Cross reference to statutes: Public Utility Regulatory Act §§14.002, 14.052, and 15.024.

§22.246. *Administrative Penalties.*

(a) Scope. This section addresses enforcement actions related to administrative penalties or disgorgement of excess revenues only and does not apply to any other enforcement actions that may be undertaken by the commission or the commission staff.

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

(1) Affected Wholesale Electric Market Participant -- An entity, including a retail electric provider (REP), municipally owned utility (MOU), or electric cooperative, that sells energy to retail customers and served load during the period of the violation.

(2) Excess Revenue -- As defined in §25.503 of this title (relating to Oversight of Wholesale Market Participants).

(3) Executive director -- The executive director of the commission or the executive director's designee.

(4) Person -- Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.

(5) Violation -- Any activity or conduct prohibited by PURA, the TWC, commission rule, or commission order.

(6) Continuing violation -- Except for a violation of PURA chapter 17, 55, or 64, and commission rules or commission orders adopted or issued under those chapters, any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.

(c) Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.

(1) Each day a violation continues or occurs is a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation may be in an amount not to exceed \$25,000 per day, provided that an administrative penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system.

(3) The amount of the administrative penalty must be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter future violations;

(E) the efforts to correct the violation; and

(F) any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.

(d) Amount of administrative penalty for violations of the TWC or a rule or order adopted under chapter 13 of the TWC.

(1) Each day a violation continues may be considered a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation may be in an amount not to exceed \$5,000 per day.

(3) The amount of the penalty must be based on:

(A) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;

(D) any economic benefit gained through the violations;

(E) the amount necessary to deter future violations; and

(F) any other matters that justice requires.

(e) Initiation of investigation. Upon receiving an allegation of a violation or of a continuing violation, the executive director will determine whether an investigation should be initiated.

(f) Report of violation or continuing violation. If, based on the investigation undertaken in accordance with subsection (e) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.

(1) Contents of the report. The report must state the facts on which the determination is based and a recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the administrative penalty and, if applicable under §25.503 of this title, a recommendation that excess revenue be disgorged.

(2) Notice of report.

(A) Within 14 days after the report is issued, the executive director will give written notice of the report to the person who is alleged to have committed the violation or continuing violation which

is the subject of the report. The notice may be given by regular or certified mail.

(B) For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, within ten days after the report is issued, the executive director will, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report.

(C) The notice must include:

(i) a brief summary of the alleged violation or continuing violation;

(ii) a statement of the amount of the recommended administrative penalty;

(iii) a statement recommending disgorgement of excess revenue, if applicable, under §25.503 of this title;

(iv) a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the administrative penalty, or both the occurrence of the violation or continuing violation and the amount of the administrative penalty;

(v) a copy of the report issued to the commission under this subsection; and

(vi) a copy of this section, §22.246 of this title (relating to Administrative Penalties).

(D) If the commission sends written notice to a person by mail addressed to the person's mailing address as maintained in the commission's records, the person is deemed to have received notice:

(i) on the fifth day after the date that the commission sent the written notice, for notice sent by regular mail; or

(ii) on the date the written notice is received or delivery is refused, for notice sent by certified mail.

(g) Options for response to notice of violation or continuing violation.

(1) Opportunity to remedy.

(A) This paragraph does not apply to a violation of PURA chapters 17, 55, or 64, or chapter 13 of the TWC, or of a commission rule or commission order adopted or issued under those chapters.

(B) Within 40 days of the date of receipt of a notice of violation set out in subsection (f)(2) of this section, the person against whom the administrative penalty or disgorgement may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent must be evidenced in writing, under oath, and supported by necessary documentation.

(C) If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no administrative penalty will be assessed against the person who is alleged to have committed the violation.

(D) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director will make a determination as to what further proceedings are necessary.

(E) If the executive director determines that the alleged violation is a continuing violation, the executive director will institute further proceedings, including referral of the matter for hearing under subsection (i) of this section.

(2) Payment of administrative penalty, disgorged excess revenue, or both. Within 20 days after the date the person receives the notice set out in subsection (f)(2) of this section, the person may accept the determination and recommended administrative penalty and, if applicable, the recommended excess revenue to be disgorged through a written statement sent to the executive director. If this option is selected, the person must take all corrective action required by the commission. The commission by written order will approve the determination and impose the recommended administrative penalty and, if applicable, recommended disgorged excess revenue or order a hearing on the determination and the recommended penalty.

(3) Request for hearing. Not later than the 20th day after the date the person receives the notice set out in subsection (f)(2) of this section, the person may submit to the executive director a written request for a hearing on any or all of the following:

- (A) the occurrence of the violation or continuing violation;
- (B) the amount of the administrative penalty; and
- (C) the amount of disgorged excess revenue, if applicable.

(4) Failure to respond. If the person fails to timely respond to the notice set out in subsection (f)(2) of this section, the commission by order will approve the determination and impose the recommended penalty or order a hearing on the determination and the recommended penalty.

(h) Settlement conference. A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the administrative penalty, disgorged excess revenue if applicable, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

(1) If a settlement is reached:

- (A) the parties must file a report with the executive director setting forth the factual basis for the settlement;
- (B) the executive director will issue the report of settlement to the commission; and
- (C) the commission by written order will approve the settlement.

(2) If a settlement is reached after the matter has been referred to the State Office of Administrative Hearings, the matter will be returned to the commission. If the settlement is approved, the commission will issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.

(i) Hearing. If a person requests a hearing under subsection (g)(3) of this section, or the commission orders a hearing under subsection (g)(4) of this section, the commission will refer the case to SOAH

under §22.207 of this title (relating to Referral to State Office of Administrative Hearings) and give notice of the referral to the person. For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, if the person charged with the violation fails to timely respond to the notice, the commission by order will assess the recommended penalty or order a hearing to be held on the findings and recommendations in the report. If the commission orders a hearing, the case will then proceed as set forth in paragraphs (1)-(5) of this subsection.

(1) The commission will provide the SOAH administrative law judge a list of issues or areas that must be addressed.

(2) The hearing must be conducted in accordance with the provisions of this chapter and notice of the hearing must be provided in accordance with the Administrative Procedure Act.

(3) The SOAH administrative law judge will promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:

(A) the occurrence of the alleged violation or continuing violation;

(B) whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA chapters 17, 55, or 64; of a commission rule or commission order adopted or issued under those chapters; or of chapter 13 of the TWC; and

(C) the amount of the proposed administrative penalty and, if applicable, disgorged excess revenue.

(4) Based on the SOAH administrative law judge's proposal for decision, the commission may:

(A) determine that a violation or continuing violation has occurred and impose an administrative penalty and, if applicable, disgorged excess revenue;

(B) if applicable, determine that a violation occurred but that, as permitted by subsection (g)(1) of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no administrative penalty will be imposed; or

(C) determine that no violation or continuing violation has occurred.

(5) Notice of the commission's order issued under paragraph (4) of this subsection must be provided under the Government Code, chapter 2001 and §22.263 of this title (relating to Final Orders) and must include a statement that the person has a right to judicial review of the order.

(j) Parties to a proceeding. The parties to a proceeding under chapter 15 of PURA relating to administrative penalties or disgorgement of excess revenue will be limited to the person who is alleged to have committed the violation or continuing violation and the commission, including the independent market monitor. This does not apply to a subsequent proceeding under subsection (k) of this section.

(k) Distribution of Disgorged Excess Revenues. Disgorged excess revenues must be remitted to an independent organization, as defined in PURA §39.151. The independent organization must distribute the excess revenue to affected wholesale electric market participants in proportion to their load during the intervals when the violation occurred to be used to reduce costs or fees incurred by retail electric customers. The load of any market participants that are no longer active at the time of the distribution will be removed prior to calculating the load proportions of the affected wholesale electric market participants that are still active. However, if the commission determines other

wholesale electric market participants are affected or a different distribution method is appropriate, the commission may direct commission staff to open a subsequent proceeding to address those issues.

(1) No later than 90 days after the disgorged excess revenues are remitted to the independent organization, the monies must be distributed to affected wholesale electric market participants active at the time of distribution, or the independent organization must, by that date, notify the commission of the date by which the funds will be distributed. The independent organization must include with the distributed monies a communication that explains the docket number in which the commission ordered the disgorged excess revenues, an instruction that the monies must be used to reduce costs or fees incurred by retail electric customers, and any other information the commission orders.

(2) The commission may require any affected wholesale electric market participants receiving disgorged funds to demonstrate how the funds were used to reduce the costs or fees incurred by retail electric customers.

(3) Any affected wholesale electric market participant receiving disgorged funds that is affiliated with the person from whom the excess revenue is disgorged must distribute all of the disgorged excess revenues directly to its retail customers and must provide certification under oath to the commission that the entirety of the revenues was distributed to its retail electric customers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7244



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 3. RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION IN TEXAS REGARDING ELECTRONIC REPORTING OPTION FOR CERTAIN OFFENSES; AMNESTY

SUBCHAPTER A. REQUIREMENTS FOR CERTAIN INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, OR STALKING AT CERTAIN PUBLIC AND PRIVATE INSTITUTIONS

OF HIGHER EDUCATION; AUTHORIZING ADMINISTRATIVE PENALTIES.

19 TAC §§3.1 - 3.20

The Texas Higher Education Coordinating Board (THECB) adopts the repeal of Chapter 3, Subchapter A, §§3.11 - 3.15 and new rules for Chapter 3, Subchapter A, §§3.1 - 3.20, concerning required reporting rules and policies regarding certain incidents of sexual harassment, sexual assault, dating violence, and stalking at postsecondary educational institutions. New §§3.1 - 3.10 and 3.16 - 3.20 were proposed in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6487). The repeal and replacement of §§3.11 - 3.15 were proposed in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6660). New §3.4 and §3.11 are adopted with changes to the proposed text as published in the November 8, 2019 issue of the *Texas Register* (44 TexReg 6660), and will be republished. New §§3.1 - 3.3, 3.5 - 3.10, and 3.12 - 3.20, as well as the repeal of §§3.11 - 3.15, are adopted without changes and will not be republished.

The agency also adopts the new rules under a new subchapter name. Subchapter A is renamed "Requirements for Certain Incidents of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking at Certain Public and Private Institutions of Higher Education; Authorizing Administrative Penalties."

Specifically, these new and replaced sections provide: a requirement in accordance with statute that all institutions of higher education adopt policies on sexual harassment, sexual assault, dating violence, and stalking. The rules provide guidance for institutions on reporting requirements, disciplinary processes, and confidentiality.

The following comments were received regarding the amendments:

A public comment was received from Doctors Hospital at Renaissance, Ltd, (DHR Health) on November 25, 2019.

Comment: DHR Health recommends that §3.5(a) be altered by inserting language in the proposed rule that would require the reporting of incidents only when the employee receiving the information has reason to believe the information is reliable.

Staff response: The Negotiated Rulemaking Committee discussed at length when an employee would need to report incidents, given the potential of erroneous reporting. After much discussion, including discussion of the "reasonable person standard" expected of a hypothetical reasonable person, the committee determined that an employee should promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator, if the employee "reasonably believes" that the incident constitutes sexual harassment, sexual assault, dating violence, or stalking. In this regard, §3.5(a) states the following (focus highlighted):

"An employee of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator."

Veracity of reports are to be determined by the Title IX Coordinator. The Title IX Coordinator is charged with determining

whether, as illustrated, "innuendo, rumors, gossip, second-hand or third-hand information," with or without substantiation, would necessitate consideration when identified as constituting sexual harassment, sexual assault, dating violence, or stalking pursuant to this new Texas mandate or constitute a matter required to be reported pursuant to other federal law or applicable institutional policy.

Thus, no change is recommended.

A public comment with five substantive comments was received from The University of Texas at Austin (UT Austin) on December 6, 2019.

Comment: UT Austin recommends that §3.3 be altered by inserting a definition of "employee" that excludes volunteers.

Staff response: The enabling statutes do not indicate that volunteers should be excluded from consideration as employees, and the Negotiated Rulemaking committee followed the statutes closely when drafting the rules.

Thus, no change is recommended.

Comment: UT Austin recommends that §3.3(c) be altered by adding a definition of "domestic violence" and indicating if that is included in the required reporting.

Staff response: The enabling statutes do not include "domestic violence" in the list of incidents that must be reported, and the Negotiated Rulemaking committee followed the statutes closely when drafting the rules.

Thus, no change is recommended.

Comment: UT Austin recommends that §3.5(c)(1)(A) be altered to clarify that staff and faculty may also speak to "confidential employees" with the same expectation of privacy as students of the institution.

Staff response: In the statute, Texas Education Code, Section 51.252 provides an exception for employee required reporting in Subsection (c) for employees who are designated as confidential resources "with whom students may speak confidentially". Therefore, the exception in the statute only covers student communications with confidential resources and does not extend the exception to faculty and staff. The Negotiated Rulemaking committee followed the statute closely when drafting the rules.

Thus, no change is recommended.

Comment: UT Austin recommends that §3.11(b) be altered by adding the word "final" to clarify that the obligation to provide information to another institution is in relation to a final determination, which ensures that the integrity of disciplinary process determinations is better protected.

Staff response: Staff concurs with this recommendation. Staff suggests modifying §3.11(b) by inserting the word "final" as shown below:

(b) On request by another postsecondary educational institution, a postsecondary educational institution shall, as permitted by state or federal law, including the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, provide to the requesting institution information relating to a **final** determination by the institution that a student enrolled at the institution violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

Comment: UT Austin recommends that §3.14(b) be revised by providing clarification that some employees may be designated

by institutions as "confidential employees" when they are serving in some capacities but not so designated while serving in other capacities.

Staff response: The enabling statutes do not provide a basis for designating certain employees as confidential at some times but not at others. This recommendation would also be complex and difficult to implement.

Thus, no change is recommended.

Consistent with the rules of negotiated rulemaking, the comments from Doctors Hospital at Renaissance, Ltd. (DHR Health) and The University of Texas at Austin were forwarded to the Negotiated Rulemaking Committee on December 3, 2019, and December 9, 2019, respectively, along with explanations that as committee members, they could accept, reject, or modify the staff recommendations. Committee members voted via email through December 10, 2019 at 12:00 p.m. and subsequently engaged in a pre-arranged audio conference call on December 10, 2019, from 1:00 p.m. - 2:30 p.m. for final discussions and votes. After discussions on the conference call, consensus was reached to accept staff's proposed responses to the comments, with some suggested modifications to staff's response language on two responses for clarity. The above responses reflect the committee's consensus decisions.

The new sections are adopted under the Texas Education Code, Sections 51.259 and 51.295, which provide the Coordinating Board with the authority to develop rules addressing sexual misconduct at institutions of higher education with the assistance of negotiated rulemaking and advisory committees.

§3.4. Policy on Sexual Harassment, Sexual Assault, Dating Violence, and Stalking.

(a) Each postsecondary educational institution shall adopt a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to each enrolled student and employee of the institution and have the policy approved by the institution's governing body. The policy must include:

- (1) Definitions of prohibited behavior;
- (2) Sanctions for violations;
- (3) Protocol for reporting and responding to reports of sexual harassment, sexual assault, dating violence, and stalking that complies with the electronic reporting requirement in §3.7 of this subchapter (relating to Electronic Reporting Requirement);
- (4) Interim measures to protect victims of sexual harassment, sexual assault, dating violence, or stalking pending the institution's disciplinary process, including protection from retaliation, and any other accommodations or supportive measures available to those victims at the institution. This section is not intended to limit an institution's ability to implement accommodations to others as needed; and
- (5) A statement regarding:
 - (A) the importance of a victim of sexual harassment, sexual assault, dating violence, or stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident;
 - (B) the right of a victim of sexual harassment, sexual assault, dating violence, or stalking to report the incident to the institution and to receive a prompt and equitable resolution of the report; and
 - (C) the right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution

in reporting the crime to law enforcement, or to decline to report the crime to law enforcement.

(b) Each postsecondary educational institution shall make its policy on sexual harassment, sexual assault, dating violence, and stalking available to students, faculty, and staff members by:

(1) including the policy in the student handbook and personnel handbook or the institution's equivalent(s); and

(2) creating and maintaining a web page dedicated solely to the policy that is easily accessible through a clearly identifiable link on the institution's homepage.

(c) Each postsecondary educational institution shall require each entering freshman or undergraduate transfer student to attend an orientation on the institution's sexual harassment, sexual assault, dating violence, and stalking policy before or during the first semester or term of enrollment at the institution. The orientation:

(1) may be provided online; and

(2) must include the statements described by subsection (a)(5) of this section.

(d) Each postsecondary educational institution shall develop and implement a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking for enrolled students and employees of the institution. The program must:

(1) address a range of strategies to prevent sexual harassment, sexual assault, dating violence, and stalking, including a public awareness campaign; a victim empowerment program; primary prevention; bystander intervention; and risk reduction; and

(2) provide students with information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, and stalking, including the name, office location, and contact information of the institution's Title IX coordinator, by:

(A) e-mailing the information to each student at the beginning of each semester or other academic term;

(B) including the information in the institution's orientation (which may be provided online); and

(C) as part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking adopted under subsection (a) of this section, each postsecondary educational institution shall:

(i) to the greatest extent practicable based on the number of counselors employed by the institution, ensure each alleged victim or alleged perpetrator of a sexual harassment, sexual assault, dating violence, and stalking incident and any other person who reports such incidents are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident; and

(ii) notwithstanding any other law, allow an alleged victim or alleged perpetrator of a sexual harassment, sexual assault, dating violence, and stalking incident to drop a course in which both parties are enrolled without any academic penalty.

(e) Each postsecondary educational institution shall review its sexual harassment, sexual assault, dating violence, and stalking policy at least each biennium and revise the policy as necessary and obtain approval from the institution's governing board.

§3.11. Student Withdrawal or Graduation Pending Disciplinary Charges; Request for Information from Another Postsecondary Educational Institution.

(a) If a student withdraws or graduates from a postsecondary educational institution pending a disciplinary charge alleging that the student violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking, the institution:

(1) may not end the disciplinary process or issue a transcript to the student until the institution makes a final determination of responsibility; and

(2) shall expedite the institution's disciplinary process as necessary to accommodate both the student's and the alleged victim's interest in a speedy resolution.

(b) On request by another postsecondary educational institution, a postsecondary educational institution shall, as permitted by state or federal law, including the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, provide to the requesting institution information relating to a final determination by the institution that a student enrolled at the institution violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

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 December 13, 2019.

TRD-201904831

William Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: January 1, 2020

Proposal publication dates: November 1, 2019/November 8, 2019

For further information, please call: (512) 427-6206



19 TAC §§3.11 - 3.15

The repeals are adopted under the Texas Education Code, Sections 51.259 and 51.295, which provide the Coordinating Board with the authority to develop rules addressing sexual misconduct at institutions of higher education with the assistance of negotiated rulemaking and advisory committees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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William Franz

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Texas Higher Education Coordinating Board

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Proposal publication date: November 8, 2019

For further information, please call: (512) 427-6206



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.13

The Texas Medical Board (Board) adopts amendments to Title 22, Part 9, §163.13, concerning Expedited Licensure with non-substantive changes, described below, to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6666). The rule will be republished.

Deletions in text of section (c) were made because the language was an unnecessary statement of intent.

The Board has determined that the public benefit anticipated as a result of enforcing this adoption will be to allow for qualified and experienced physicians who have practiced successfully in other states to obtain expedited licensure in Texas.

The adopted amendment to §163.13, relating to Expedited Licensure is amended to implement a legislative mandate in H.B. 1504 (86th Regular Legislative Session) requiring the Board to develop an expedited licensing process for certain applicants who also hold an out-of-state license in good standing.

No written comments were received. No one appeared in person to testify regarding the rules at the public hearing on December 6, 2019.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, 155.0561, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2019.

TRD-201904834

Scott Freshour

General Counsel

Texas Medical Board

Effective date: January 5, 2020

Proposal publication date: November 8, 2019

For further information, please call: (512) 305-7016



CHAPTER 182. USE OF EXPERTS

The Texas Medical Board (Board) adopts amendments to 22 TAC §182.1, concerning Purpose, §182.3, concerning Definitions, §182.5, concerning Expert Panel Qualifications, §182.8, concerning Expert Physician Reviewers and the repeal of §§182.2, 182.4, 182.6, 182.7, without changes to the proposed text as published in the November 1, 2019, issue of the *Texas Register* (44 TexReg 6491). The rules will not be republished.

The Board has determined that the public benefit anticipated as a result of enforcing this adoption will be to provide greater information and due process to regulated licensees when addressing allegations of violations related to standard of care and other statutory violations.

Amendments and repeals in Chapter 182 are adopted as follows:

Section 182.1, relating to Purpose, is amended to clarify the scope of the rule and its applicability.

Section 182.2, relating to Board's Role, is repealed.

Section 182.3, relating to Definitions, is amended to clarify definitions relating to role, purpose, and scope of various professionals utilized by the board.

Section 182.4, relating to Use of Consultants, is repealed.

Section 182.5, relating to Expert Panel, is renamed "Expert Reviewer Qualifications" and amended to delete obsolete language and to change the order of identified certifying boards.

Section 182.6, relating to Use of Expert Witnesses, is repealed.

Section 182.7, relating to Interim Appointment, is repealed.

Section 182.8, relating to Expert Physician Reviewers, is amended to delete obsolete language regarding the processes and procedures applicable to the expert physician reviewers. The amendments to §182.8 implement the legislative mandate passed in HB 1504 (86th Regular Legislative Session) relating to expert panel reports and providing each reviewer report to the affected licensee and the content of each report. This amendment also adds language requiring notice to the panel when a case involves Complementary and Alternative Medicine.

No written comments were received and no one appeared in person to testify regarding the rules at the public hearing on December 6, 2019.

22 TAC §§182.1, 182.3, 182.5, 182.8

The amendments are adopted under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2019.

TRD-201904835

Scott Freshour

General Counsel

Texas Medical Board

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Proposal publication date: November 1, 2019

For further information, please call: (512) 305-7016



22 TAC §§182.2, 182.4, 182.6, 182.7

The repeals are adopted under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 16, 2019.

TRD-201904836



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

28 TAC §1.414

The Commissioner of Insurance adopts amendments to 28 TAC §1.414, relating to the 2020 assessment of maintenance taxes and fees imposed by the Insurance Code. The department adopts the amendments to §1.414 without changes to the proposed text published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6679). The rule text will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2020 on the basis of gross premium receipts for calendar year 2019.

Section 1.414 includes rates of assessment to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third party administrators; and workers' compensation certified self-insurers.

The department adopts an amendment to the section heading to reflect the year for which the proposed assessment of maintenance taxes and fees is applicable. The department also adopts amendments in subsections (a) - (f) and (h) to reflect the appropriate year for accurate application of the section.

The department adopts amendments in subsections (a)(1) - (9), (b), (c)(1) - (2), (d), and (e) to update rates to reflect the methodology the department developed for 2020. The adopted amendments also delete subsection (c)(3), because of the repeal of the tax by Senate Bill 1623, 86th Legislature, Regular Session (2019).

The following paragraphs provide an explanation of the methodology used to determine proposed rates of assessment for maintenance taxes and fees for 2020:

In general, the department's 2020 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under Insurance Code §401.252; and premium finance examination assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2019.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1353 (House Bill 1), Acts of the 86th Legislature, Regular Session, (2019) (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Chapter 401, Subchapters D and F, as approved by the Commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2020 fiscal year until the next assessment collection period in 2021. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation (DWC) and the Workers' Compensation Research and Evaluation Group.

The department determined how to allocate the remaining cost need to be attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the self-directed budget account, the examination assessment, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculated the total direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the department that must be funded by Account No. 0036 and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees. The department added these costs to the sum of the direct costs and the administrative support costs for the appropriate funding source, when possible. For instance, the department allocates an appropriation to the Texas Department of Transportation for the crash information records system to the motor vehicle maintenance tax. The department included costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs. For instance, the department included an appropriation to the Texas Facilities Commission for building support costs in administrative support costs.

The department calculated the total revenue need after completing the allocation of costs to each funding source. To complete the calculation of revenue need, the department removed costs, revenues received, and fund balance related to the self-directed budget account. Based on remaining balances, the department reduced the total cost need by subtracting the estimated end-

ing fund balance for fiscal year 2019 (August 31, 2019) and estimated fee revenue collections for fiscal year 2020. The resulting balance is the estimated revenue need that must be supported during the 2020 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance assessments.

The department determined the revenue need for each maintenance tax or fee line by dividing the total cost need for each maintenance tax line by the total of the revenue needs for all maintenance taxes. The department multiplied the calculated percentage for each line by the total revenue need for maintenance taxes. The resulting amount is the revenue need for each maintenance tax line. The department adjusted the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The department further adjusted the resulting revenue need as described below.

The cost allocated to the life, accident, and health maintenance tax exceeds the amount of revenue that can be collected at the maximum rate set by statute. The department allocated the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the life, accident, and health maintenance tax to the other maintenance tax or fee lines. The department allocated the life, accident, and health shortfall based on each of the remaining maintenance tax or fee lines a proportionate share of the total costs for maintenance taxes or fees. The department used the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the department divided the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the methodology to develop the proposed rates for DWC and the Office of Injured Employee Counsel (OIEC):

To determine the revenue need, the department considered the following factors applicable to costs for DWC and OIEC: (i) the appropriations in the General Appropriations Act for fiscal year 2020 from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits; and (iii) an estimated cash amount to finance Account No. 0036 costs from the end of the 2020 fiscal year until the next assessment collection period in 2021. The department added these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2019, and the DWC fee and reimbursement revenue estimate to be collected and deposited to Account No. 0036 in fiscal year 2020. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers' compensation premium volume and the certified self-insurers' liabilities plus the amount of expense incurred for administration of self-insurance.

The following paragraphs provide an explanation of the methodology the department used to develop the proposed rates for the Workers' Compensation Research and Evaluation Group:

To determine the revenue need, the department considered the following factors that are applicable to the Workers' Compen-

sation Research and Evaluation Group: (i) the appropriations in the General Appropriations Act for fiscal year 2020 from Account No. 0036 and from the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from this funding source, such as fringe benefits; and (iii) an estimated cash amount to finance costs from this funding source from the end of the 2020 fiscal year until the next assessment collection period in 2021. The department added these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2019. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Subtitle C, Title 3, on the correctly reported gross premiums from writing insurance on risks located in Texas as applicable to the individual lines of business written. The rates proposed in this rule will be applied to captive insurance companies based on the individual lines of business written, unless the Commissioner postpones or waives the tax for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to Texas under Insurance Code §964.071(c).

SUMMARY OF COMMENTS. The department did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §1.414 under Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 271.002 - 271.006; 964.068; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) provides that the Commissioner administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §201.052(a) requires the department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(d) provides that in setting maintenance taxes for each fiscal year, the Commissioner ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the Comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) provides that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the

amount of expenses incurred by the Comptroller, other money in the Texas Department of Insurance operating account be used to reimburse the appropriate portion of the general revenue fund.

Insurance Code §251.001 directs the Commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code Title 3, Subtitle C.

Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §252.003. Insurance Code §252.001 also specifies that the tax required by Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 252.

Insurance Code §252.002 provides that the rate of assessment set by the Commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under Insurance Code §252.003. Section 252.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under: Insurance Code Chapters 1807, 2001 - 2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; Government Code §§417.007, 417.008, and 417.009; and Occupations Code Chapter 2154.

Insurance Code §252.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by: bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by Insurance Code §2002.006(b); fire; flood; frost and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the leakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §253.003. Section 253.001 also provides that the tax required by Insurance Code Chapter 253 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 253.

Insurance Code §253.002 provides that the rate of assessment set by the Commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under Insurance Code §253.003. Section 253.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code §253.003.

Insurance Code §253.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under Insurance Code Chapters 2008, 2251, and 2252; Chapter 5, Subchapter B; Chapter 1806, Subchapter C; Chapter 2301, Subchapter A; and Title 10, Subtitle B.

Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §254.003. Section 254.001 also provides that the tax required by Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 254.

Insurance Code §254.002 provides that the rate of assessment set by the Commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under Insurance Code §254.003. Section 254.002 also provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance.

Insurance Code §254.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange, and Lloyd's plan. Section 255.001 also provides that the tax required by Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 255.

Insurance Code §255.002 provides that the rate of assessment set by the Commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under Insurance Code §255.003. Section 255.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

Insurance Code §255.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 255 on the correctly reported gross premiums from writing workers' compensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit.

Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Insurance Code §257.003. Section 257.001(a) also provides that the tax re-

quired by Chapter 257 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 257.

Insurance Code §257.002 provides that the rate of assessment set by the Commissioner may not exceed 0.04 percent of the gross premiums subject to taxation under Insurance Code §257.003. Section 257.002(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers.

Insurance Code §257.003 specifies that an insurer must pay maintenance taxes under Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas, as well as gross considerations collected from writing annuity or endowment contracts in Texas. The section also provides that gross premiums on which an assessment is based under Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §258.002 imposes a per capita maintenance tax on each authorized HMO with gross revenues subject to taxation under Insurance Code §258.004. Section 258.002 also provides that the tax required by Insurance Code Chapter 258 is in addition to other taxes that are not in conflict with Insurance Code Chapter 258.

Insurance Code §258.003 provides that the rate of assessment set by the Commissioner on HMOs may not exceed \$2 per enrollee. Section 258.003 also provides that the Commissioner annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating HMOs. Section 258.003 also provides that rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and must equitably reflect any differences in regulatory resources attributable to each type of plan.

Insurance Code §258.004 provides that an HMO must pay per capita maintenance taxes under Insurance Code Chapter 258 on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.004 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who, as individual certificate holders or their dependents, are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to pro-

vide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §259.002 imposes a maintenance tax on each authorized third party administrator with administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.002 also provides that the tax required by Insurance Code Chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter.

Insurance Code §259.003 provides that the rate of assessment set by the Commissioner may not exceed 1 percent of the administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.003(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner determines is necessary to pay the expenses of regulating third party administrators.

Insurance Code §259.004 requires a third party administrator to pay maintenance taxes under Chapter 259 on the administrator's correctly reported administrative or service fees.

Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and must be reported and paid separately from premium and retaliatory taxes.

Insurance Code §271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent.

Insurance Code §271.004 provides that the Commissioner annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004(b) provides that in determining the rate of assessment, the Commissioner consider the requirement to reimburse the appropriate portion of the general revenue fund under Insurance Code §201.052.

Insurance Code §271.005 provides that the rate of assessment set by the Commissioner may not exceed 1 percent of the gross premiums subject to assessment under Insurance Code §271.006. Section 271.005(b) provides that the Commissioner annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the Commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance.

Insurance Code §271.006 requires an insurer to pay maintenance fees under Chapter 271 on the correctly reported gross premiums from writing title insurance in Texas.

Insurance Code §964.068 provides that a captive insurance company is subject to maintenance tax under Insurance Code, Title 3, Subtitle C, on the correctly reported gross premiums from writing insurance on risks located in this state as applicable to the individual lines of business written by the captive insurance company.

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

Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers' Compensation Act and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §403.002 also provides that the assessment may not exceed an amount equal to 2 percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Article 5.55C, which was recodified as Insurance Code §2053.202 by House Bill 2017, 79th Legislature, Regular Session (2005). Labor Code §403.002 also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit. Additionally, Labor Code §403.002 states that a workers' compensation insurance company is taxed at the rate established under Labor Code §403.003, and that the tax be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Insurance Code Chapter 255. Finally, Labor Code §403.002 states that each certified self-insurer must pay a fee and maintenance taxes as provided by Labor Code Chapter 407, Subchapter F.

Labor Code §403.003 requires the Commissioner of Insurance to set and certify to the Comptroller the rate of maintenance tax assessment, taking into account: (i) any expenditure projected as necessary for DWC and OIEC to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, and gifts recovered under the Texas Workers' Compensation Act; and (v) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud. Labor Code §403.003 also provides that in setting the rate of assessment, the Commissioner of Insurance may not consider revenue or expenditures related to the State Office of Risk Management, the workers' compensation research functions of the department under Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

Labor Code §403.005 provides that the Commissioner of Insurance must annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the Commissioner of Insurance determines is necessary to pay the expenses of administering the Texas Workers' Compensation Act. Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-insurance groups to fund the Workers' Compensation Research and Evaluation Group, it provides for the department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and it provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of the DWC and OIEC and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §407.103 also provides that not more than 2 percent of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax estab-

lished under Labor Code §407.103. Labor Code §407.103 also provides that to determine the tax base of a certified self-insurer for purposes of Labor Code Chapter 407, the department multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers' compensation insurance companies under Labor Code §403.002 and §403.003. Finally, Labor Code §407.103 provides that in setting the rate of maintenance tax assessment for insurance companies, the Commissioner of Insurance may not consider revenue or expenditures related to the operation of the self-insurer program under Labor Code Chapter 407.

Labor Code §407.104(b) provides that the department compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Section 407.104(b) also provides that a certified self-insurer must remit the taxes and fees to DWC.

Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of DWC, the prosecution of workers' compensation insurance fraud in Texas, the research functions of the department under Labor Code Chapter 405, and the administration of OIEC under Labor Code Chapter 404. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §403.002 and §403.003. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §405.003. Additionally, Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, Labor Code §407A.301(e) provides that the tax under the section be collected by the Comptroller as provided by Insurance Code Chapter 255 and Insurance Code §201.051.

Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing Labor Code Chapter 407A. Labor Code §407A.302 provides that the tax liability of a workers' compensation self-insurance group under the section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance. Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to Insurance Code Chapter 255, and that it be collected by the Comptroller in the manner provided by Insurance Code Chapter 255.

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 December 16, 2019.



CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1001

The Commissioner of Insurance adopts amendments to 28 TAC §7.1001, relating to 2020 assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. The department adopts the amendments to §7.1001 without changes to the proposed text published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6695). The rule text will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2020 calendar year. The amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurer, based on admitted assets and gross premium receipts for the 2019 calendar year, and from each foreign insurer examined during the 2019 calendar year using the same methodology.

The department adopts an amendment to the section heading to reflect the year for which the proposed assessment will be applicable. The department also adopts amendments in subsections (b)(1) and (2), (c)(1), (c)(2)(A) and (B), (c)(3), and (d) to reflect the appropriate year for accurate application of the section.

The department adopts amendments in subsection (c)(2)(A) and (B) to update assessments to reflect the methodology the department has developed for 2020.

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2020:

In general, the department's 2020 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; premium finance exam assessments; and funds in the self-directed budget account, as established under Insurance Code §401.252) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2019.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1353 (House Bill 1), Acts of the 86th Legislature, Regular Session, (2019) (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036)

and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Chapter 401, Subchapters D and F, as approved by the Commissioner of Insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2020 fiscal year until the next assessment collection period in 2021. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation and the Workers' Compensation Research and Evaluation Group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculated the total direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need, the department combined the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracted the fiscal year 2020 estimated amount of examination direct billing revenue from the amount of the combined costs of the examination overhead assessment source and the self-directed budget account source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

To calculate the assessment rates, the department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The department divided the revenue need for gross premium receipts by the total estimated gross premium receipts for calendar year 2019 to determine the proposed rate of assessment for gross premium receipts. The department divided the revenue need for admitted assets by the total estimated admitted assets for calendar year 2019 to determine the proposed rate of assessment for admitted assets.

SUMMARY OF COMMENTS. The department did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The Commissioner adopts the amendments to 28 TAC §7.1001 under Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152;

401.155, 401.156; 843.156(h); and 36.001; and Labor Code §407A.252(b).

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the Commissioner or Comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) provides that the Commissioner administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the Commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §401.151 provides that a domestic insurer examined by the department or under the department's authority must pay the expenses of the examination in an amount the Commissioner certifies as just and reasonable. Insurance Code §401.151 also provides that the department collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including the salaries and expenses of department employees and expenses described by Insurance Code §803.007. Section 401.151 also requires that the department impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of Texas relating to the examination of insurers. Additionally, §401.151 states that in determining the amount of assessment, the department consider the insurer's annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by §818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

Insurance Code §401.152 provides that an insurer not organized under the laws of Texas must reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other department expenses that are properly allocable to the department's participation in the examination. Section 401.152(a-1) requires that the department also impose an annual assessment on insurers not organized under the laws of this state subject to examination as described by the section in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers, and the amount imposed must be computed in the same manner as the amount imposed under §401.151(c) for domestic insurers. Section 401.152 also requires an insurer to pay the expenses under the section directly to the department on presentation of an itemized written statement from the Commissioner. Additionally, §401.152 provides that the Commissioner determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

Insurance Code §401.155 requires the department to impose additional assessments against insurers on a pro rata basis as necessary to cover all expenses and disbursements required by law and to comply with Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

Insurance Code §401.156 requires the department to deposit any assessments or fees collected under Insurance Code Chapter 401, Subchapter D, relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by Insurance Code §401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs as defined by Insurance Code §401.251, to reimburse the Texas Department of Insurance operating account for administrative support costs, and for premium tax credits for examination costs and examination overhead assessments. Additionally, §401.156 provides that revenue not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the Texas Department of Insurance operating account.

Insurance Code §843.156(h) provides that Insurance Code Chapter 401, Subchapter D, applies to an HMO, except to the extent that the Commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropriate.

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

Labor Code §407A.252(b) provides that the Commissioner of Insurance may recover the expenses of an examination of a workers' compensation self-insurance group under Insurance Code Article 1.16, which was recodified as Insurance Code §§401.151, 401.152, 401.155, and 401.156 by House Bill 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under Labor Code §407A.302 does not cover those expenses.

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 December 16, 2019.

TRD-201904849

James Person

General Counsel

Texas Department of Insurance

Effective date: January 5, 2020

Proposal publication date: November 8, 2019

For further information, please call: (512) 676-6584



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Office of the Governor

Title 1, Part 1

The Texas Crime Stoppers Council (Council) files this notice of intention to review Texas Administrative Code Title 1, Part 1, Chapter 3, Subchapter H, Texas Crime Stoppers Program. The review is being conducted in accordance with Texas Government Code §2001.039.

An assessment will be made by the Council as to whether the reasons for adopting the rules continue to exist. Each rule will be reviewed to determine whether to readopt, readopt with amendments, or repeal the rule.

Comments may be submitted for 30 days following the date of publication of this notice by mail to Margie Fernandez-Prew, Office of the Governor, Texas Crime Stoppers Council, P.O. Box 12428, Austin, Texas 78711 or to txcrimestoppers@gov.texas.gov with the subject line "Council Rule Review."

TRD-201904873

Margie Fernandez-Prew
Director, Texas Crime Stoppers Council
Office of the Governor
Filed: December 17, 2019



State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 239, Student Services Certificates, pursuant to the Texas Government Code (TGC), §2001.039.

As required by the TGC, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 239 continue to exist.

The comment period on the review of 19 TAC Chapter 239 begins January 3, 2020, and ends February 3, 2020. A form for submitting public comments on proposed rule review is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/State_Board_for_Educator_Certification_Rule_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/State_Board_for_Educator_Certification_Rule_Review/). Comments on the proposed review may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 239 at the February 21, 2020, meeting in accordance with the SBEC board operating policies and procedures.

TRD-201904889

Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: December 18, 2019



Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 283, (§§283.1 - 283.12), concerning Licensing Requirements for Pharmacists, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

TRD-201904918

Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Filed: December 18, 2019



The Texas State Board of Pharmacy files this notice of intent to review Chapter 291, Subchapter B (§§291.31 - 291.36), concerning Pharmacies (Community Pharmacy (Class A)), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

TRD-201904919

Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Filed: December 18, 2019



The Texas State Board of Pharmacy files this notice of intent to review Chapter 315, (§§315.1 - 315.14), concerning Controlled Substances,

pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist, may be submitted to Megan G. Holloway, Assistant General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin, Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., February 3, 2020.

TRD-201904920

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

Executive Director

Texas State Board of Pharmacy

Filed: December 18, 2019



Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §161.21, concerning the Role of the Judicial Advisory Council. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Criminal Justice contemporaneously proposes amendments to §161.21.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register*.

TRD-201904832

Erik Brown

Director of Legal Affairs

Texas Department of Criminal Justice

Filed: December 13, 2019

Three diamond symbols arranged horizontally, used as a section separator.

Adopted Rule Reviews

Joint Financial Regulatory Agencies

Title 7, Part 8

The Finance Commission of Texas (Commission), after reviewing and considering for readoption, revision, or repeal, Chapter 155 of Texas Administrative Code, Title 7, in its entirety (7 TAC §§155.1 - 155.3), adopts the review of Chapter 155, concerning Payoff Statements, in accordance with Texas Government Code §2001.039.

The proposed notice of intent to review rules was published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6377).

No comments were received on the proposed rule review.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 155 are needed, reflect current legal and policy considerations, and reflect current procedures. The reasons for initially adopting the rules continue to exist. The Commission, therefore, re-adopts Chapter 155 in its entirety in accordance with the requirements of Texas Government Code, Section 2001.039.

However, the Commission has determined a certain section should be amended and will propose changes in a separate section of the *Texas Register*. This concludes the review of 7 TAC Chapter 155.

TRD-201904830

Ernest C. Garcia

General Counsel

Joint Financial Regulatory Agencies

Filed: December 13, 2019



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

PAYOFF STATEMENT FORM

Name of Mortgage Servicer _____	REQUEST DATE: ___/___/___
Name of Representative _____	
Street or E-mail Address _____	SENT BY: <input type="checkbox"/> Mail <input type="checkbox"/> E-mail
City, State, Zip Code _____	<input type="checkbox"/> Facsimile

LOAN INFORMATION

MORTGAGOR: _____	NEXT PAYMENT DUE DATE: ___/___/___
COLLATERAL: _____	Loan Type: _____

AMOUNT DUE

THIS STATEMENT REFLECTS THE TOTAL AMOUNT DUE UNDER THE TERMS OF THE NOTE/SECURITY INSTRUMENT THROUGH THE CLOSING DATE WHICH IS ___/___/_____. If this obligation is not paid in full by this date, then you should obtain from us an updated payoff amount before closing.

Total Principal, Interest, and other amounts due under the Note/Security Instrument:

Unpaid Principal Balance:	\$ _____
Interest through ___/___/___	\$ _____
Less Reductions in amount due	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL AMOUNT DUE:	\$ _____

WHERE TO SUBMIT PAYOFF FUNDS

WIRE TRANSFER	Beneficiary Name: _____		Attention: _____
	Beneficiary/Receiving Bank: _____		Company: _____
	Beneficiary Bank ABA: _____		Address: _____
	Beneficiary Bank Account: _____		_____
	Special Information to Beneficiary: _____		_____
	_____		_____
	OVERNIGHT MAIL		

LEGAL NOTICES

TEXAS FINANCE CODE § 343.106 REQUIRES PAYOFF STATEMENT CONTAIN CLOSING DATE AND DATE THROUGH WHICH PAYOFF AMOUNT IS VALID. THESE REQUIREMENTS CANNOT BE DELETED FROM PAYOFF STATEMENT.

ANY AMOUNT HELD IN ESCROW AT CLOSING WILL BE SETTLED IN ACCORDANCE WITH APPLICABLE FEDERAL LAW.

TEXAS FINANCE CODE § 343.106 REQUIRES THE IMPLEMENTING RULE TO ALLOW MORTGAGE SERVICERS AT LEAST SEVEN (7) BUSINESS DAYS FROM THE DATE OF RECEIPT OF PAYOFF REQUEST TO RESPOND TO A REQUEST MADE UNDER THE STATUTE.

OPTIONAL SECTIONS

This is an Adjustable Rate Mortgage. Under the terms of this loan the next Change Date for the interest rate charged is ___/___/_____. We will only issue a payoff good through the next Change Date. If the closing date is past the next Change Date an updated Payoff Statement from us will be required.

If loan has quotable per diem interest, then "Funds received after ___/___/_____ will be subject to an additional \$ _____ of interest per day." FUNDS MUST BE RECEIVED BY _____ FOR SAME-DAY PROCESSING. PAYOFFS ARE NOT POSTED ON WEEKENDS OR HOLIDAYS. INTEREST WILL BE ADDED TO THE ACCOUNT FOR THESE DAYS.

NOTE: This Note/Security Instrument is due for payment on ___/___/_____. If payment is not received within _____ days of the current payment due date, a late charge of \$ _____ will be assessed. Please add that amount to the payoff total.

Escrow Disbursement Amounts & Dates:

Description(s):	Amount(s) Held:	Next Disbursement Date(s):
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

Release of Lien Processing:

Figure: 16 TAC §9.15(e)
(Revised January 2020)

TABLE 1. LP-Gas Penalty Schedule Guideline

LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range
Tex. Nat. Res. Code, Chapter 113	Any violation of Chapter 113, Texas Natural Resources Code	\$1,000-2,500
16 TAC §9.4(a)	Retention of records	\$500
16 TAC §9.4(d)	Licensee and registrant obligations	\$2,500
16 TAC §9.7(a)	Performing LP-gas activities without proper certification and/or license	\$500
16 TAC §9.7(d)	Copies of licenses and/or certifications	\$100
16 TAC §9.7(g)	Company representative and/or branch manager	\$500
16 TAC §9.7(h)	Performing container manufacturing activities without proper registration	\$500
16 TAC §9.7(j)	License renewals and manufacturer registration lapse, 1-2 months	\$500
16 TAC §9.7(j)	License renewals and manufacturer registration lapse, 3-4 months	\$750
16 TAC §9.7(j)	License renewals and manufacturer registration lapse, 5-6 months	\$1,000
16 TAC §9.7(j)	License renewals and manufacturer registration lapse, more than 6 months	\$1,000-2,500
16 TAC §9.9	Requirements for certificate renewal	\$250
16 TAC §9.11	Employee transfers	\$100
16 TAC §9.12	Trainees	\$500-1,000
16 TAC §9.13	General installers and repairman exception	\$500-1,000
16 TAC §9.17	Designation and responsibilities of company reps	\$500
16 TAC §9.21	Franchise tax certification and assumed name certificates	\$500
16 TAC §9.22	Changes in ownership, form or name of dealership	\$500
16 TAC §9.23	Limitation/avoidance of licensee liability	\$2,500
16 TAC §9.26	Insurance and self-insurance requirements	\$1,000
16 TAC §9.28	Reasonable safety provisions	\$2,500
16 TAC §9.32	Consumer safety notification	\$500
16 TAC §9.35	Written procedure for leak check	\$100-500
16 TAC §9.36(a)	Report of an LP-gas incident/accident	\$1,000
16 TAC §9.36(c)	Completed Form 20	\$100
16 TAC §9.36(e)	Category P must notify supplier of incident	\$250
16 TAC §9.41	Testing LP-gas systems in school facilities	\$1,000
16 TAC §9.101(b)	Filings for stationary installations Form 501 (< 10,000 gal AWC), 1-5 occurrences	\$100
16 TAC §9.101(b)	Filings for stationary installations Form 501 (< 10,000 gal AWC), 6-10 occurrences	\$200
16 TAC §9.101(b)	Filings for stationary installations Form 501 (< 10,000 gal AWC), >10 occurrences	\$500
16 TAC §9.101(c)	Filings for stationary installations Form 500 (>= 10,000 gal AWC)	\$1,000
16 TAC §9.109	Physical inspection of stationary installation	\$250-1,000
16 TAC §9.113	Maintenance	\$250-1,000
16 TAC §9.114(a)	Odorization in accordance with NFPA 58	\$500-2,500
16 TAC §9.126(a)-(b)	All appurtenances and equipment shall be listed	\$1,000

LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range
16 TAC §9.126(c)	Licensee or operator of equipment not listed but approved for use by manufacturer shall maintain documentation	\$250
16 TAC §9.129	Manufacturer's nameplate and markings	\$1,000
16 TAC §9.131	200 PSIG working pressure stationary vessels	\$500-1,000
16 TAC §9.132	Sales to unlicensed individuals	\$1,000
16 TAC §9.134	Connecting container to piping	\$250-1,000
16 TAC §9.135	Unsafe or unapproved containers, cylinders or piping	\$500-2,500
16 TAC §9.136	Filling DOT containers	\$500-2,500
16 TAC §9.137	Inspection of containers at each filling	\$500
16 TAC §9.140	Uniform protection standards	\$100-750
16 TAC §9.141	Uniform safety requirements	\$100-750
16 TAC §9.142	LP-gas storage and installation requirements	\$100-500
16 TAC §9.143	Bulkhead, internal valve, ball valve and ESV protection	\$500-2,500
16 TAC §9.201	Applicability (includes 49 CFR 100-185)	\$500-2,500
16 TAC §9.202	Registration and transfer of LP-gas transports	\$500-1,500
16 TAC §9.203	School bus, public transportation, mass and special transit	\$100-500
16 TAC §9.204	Maintenance of vehicles	\$250-1,000
16 TAC §9.206	Vehicle identification labels	\$50-100
16 TAC §9.208	Testing requirements	\$250-1,000
16 TAC §9.211	Markings	\$250
16 TAC §9.212	Manifests	\$250
16 TAC §9.301	NFPA 54 adopted by reference unless otherwise listed	\$250-2,500
16 TAC §9.301	NFPA 54 Section 7.1.2.1 underground piping cover requirements	\$250-750
16 TAC §9.301	NFPA 54 Section 7.1.7.1 connection of plastic piping	\$500-1,000
16 TAC §9.301	NFPA 54 Section 7.1.7.3 tracer wire	\$100-500
16 TAC §9.301	NFPA 54 Section 7.7.2.1 cap all outlets	\$100-500
16 TAC §9.301	NFPA 54 Section 8.2.3 test for leakage	\$1,500
16 TAC §9.301	NFPA 54 Section 9.1.1.2 appliance installation	\$500-1,000
16 TAC §9.301	NFPA 54 Section 9.6.8 sediment trap	\$100-500
16 TAC §9.301	NFPA 54 Section 12.2.1 venting of appliances	\$500-1,000
16 TAC §9.306	Room heaters in public buildings	\$250-1,000
16 TAC §9.307	Identification of converted appliances	\$100-250
16 TAC §9.308	Identification of piping installation	\$100-250
16 TAC §9.311	Special exceptions for appliance connectors and piping support on agricultural and industrial structures	\$100-500
16 TAC §9.312	Certification requirements for joining methods	\$500
16 TAC §9.401	NFPA 58 adopted by reference unless otherwise listed	\$250-2,500
16 TAC §9.401	NFPA 58 Section 6.4.1.1 (distance from container), first occurrence	\$500
16 TAC §9.401	NFPA 58 Section 6.4.1.1 (distance from container), 2nd occurrence	\$750
16 TAC §9.401	NFPA 58 Section 6.4.1.1 (distance from container), 3 or more occurrences	\$1,000

LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range
16 TAC §9.401	NFPA 58 Section 5.2.2.3 and 11.3.1.5 (requalification of cylinders), 1-10 cylinders	\$500
16 TAC §9.401	NFPA 58 Section 5.2.2.3 and 11.3.1.5 (requalification of cylinders), 11-20 cylinders	\$750
16 TAC §9.401	NFPA 58 Section 5.2.2.3 and 11.3.1.5 (requalification of cylinders), >20 cylinders	\$1,000
16 TAC §9.401	NFPA 58 Section 9.4.8 (chock blocks)	\$100-250
16 TAC §9.403	Sections in NFPA 58 not adopted by reference or adopted with change or additional requirements	\$250-2,500

Figure: 16 TAC §9.15(k)
(Revised January 2020)

TABLE 5. LP-Gas Penalty Worksheet

	LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
1	Tex. Nat. Res. Code, Chapter 113	Any violation of Chapter 113, Texas Natural Resources Code	\$1,000-2,500	\$
2	16 TAC §9.4(a)	Retention of records	\$500	\$
3	16 TAC §9.4(d)	Licensee and registrant obligations	\$2,500	\$
4	16 TAC §9.7(a)	Performing LP-gas activities without proper certification and/or license	\$500	\$
5	16 TAC §9.7(d)	Copies of licenses and/or certifications	\$100	\$
6	16 TAC §9.7(g)	Company representative and/or branch manager	\$500	\$
7	16 TAC §9.7(h)	Performing container manufacturing activities without proper registration	\$500	\$
8	16 TAC §9.7(j)	License renewals and manufacturer registration lapse, 1-2 months	\$500	\$
9	16 TAC §9.7(j)	License renewals and manufacturer registration lapse, 3-4 months	\$750	\$
10	16 TAC §9.7(j)	License renewals and manufacturer registration lapse, 5-6 months	\$1,000	\$
11	16 TAC §9.7(j)	License renewals and manufacturer registration lapse, more than 6 months	\$1,000-2,500	\$
12	16 TAC §9.9	Requirements for certificate holder renewal	\$250	\$
13	16 TAC §9.11	Employee transfers	\$100	\$
14	16 TAC §9.12	Trainees	\$500-\$1,000	\$
15	16 TAC §9.13	General installers and repairman exception	\$500-1,000	\$
16	16 TAC §9.17	Designation and responsibilities of company reps	\$500	\$
17	16 TAC §9.21	Franchise tax certification and assumed name certificates	\$500	\$
18	16 TAC §9.22	Changes in ownership, form or name of dealership	\$500	\$
19	16 TAC §9.23	Limitation/avoidance of licensee liability	\$2,500	\$
20	16 TAC §9.26	Insurance and self-insurance requirements	\$1,000	\$
21	16 TAC §9.28	Reasonable safety provisions	\$2,500	\$
22	16 TAC §9.32	Consumer safety notification	\$500	\$
23	16 TAC §9.35	Written procedure for leak check	\$100-500	\$
24	16 TAC §9.36(a)	Report of an LP-gas incident/accident	\$1,000	\$
25	16 TAC §9.36(c)	Completed Form 20	\$100	\$
26	16 TAC §9.36(e)	Category P must notify supplier of incident	\$250	\$
27	16 TAC §9.41	Testing LP-gas systems in school facilities	\$1,000	\$
28	16 TAC §9.101(b)	Filings for stationary installations Form 501 (< 10,000 gal AWC), 1-5 occurrences	\$100	\$
29	16 TAC §9.101(b)	Filings for stationary installations Form 501 (< 10,000 gal AWC), 6-10 occurrences	\$200	\$
30	16 TAC §9.101(b)	Filings for stationary installations Form 501 (< 10,000 gal AWC), >10 occurrences	\$500	\$

	LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
31	16 TAC §9.101(c)	Filings for stationary installations Form 500 (>= 10,000 gal AWC)	\$1,000	\$
32	16 TAC §9.109	Physical inspection of stationary installation	\$250-1,000	\$
33	16 TAC §9.113	Maintenance	\$250-1,000	\$
34	16 TAC §9.114(a)	Odorization in accordance with NFPA 58	\$500-2,500	\$
35	16 TAC §9.126(a)-(b)	All appurtenances and equipment shall be listed	\$1,000	\$
36	16 TAC §9.126(c)	Licensee or operator of equipment not listed but approved for use by manufacturer shall maintain documentation	\$250	\$
37	16 TAC §9.129	Manufacturer's nameplate and markings	\$1,000	\$
38	16 TAC §9.131	200 PSIG working pressure stationary vessels	\$500-1,000	\$
39	16 TAC §9.132	Sales to unlicensed individuals	\$1,000	\$
40	16 TAC §9.134	Connecting container to piping	\$250-1,000	\$
41	16 TAC §9.135	Unsafe or unapproved containers, cylinders or piping	\$500-2,500	\$
42	16 TAC §9.136	Filling DOT containers	\$500-2,500	\$
43	16 TAC §9.137	Inspection of containers at each filling	\$500	\$
44	16 TAC §9.140	Uniform protection standards	\$100-750	\$
45	16 TAC §9.141	Uniform safety requirements	\$100-750	\$
46	16 TAC §9.142	LP-gas storage and installation requirements	\$100-500	\$
47	16 TAC §9.143	Bulkhead, internal valve, ball valve and ESV protection	\$500-2,500	\$
48	16 TAC §9.201	Applicability (includes 49 CFR 100-185)	\$500-2,500	\$
49	16 TAC §9.202	Registration and transfer of LP-gas transports	\$500-1,500	\$
50	16 TAC §9.203	School bus, public transportation, mass and special transit	\$100-500	\$
51	16 TAC §9.204	Maintenance of vehicles	\$250-1,000	\$
52	16 TAC §9.206	Vehicle identification labels	\$50-100	\$
53	16 TAC §9.208	Testing requirements	\$250-1,000	\$
54	16 TAC §9.211	Markings	\$250	\$
55	16 TAC §9.212	Manifests	\$250	\$
56	16 TAC §9.301	NFPA 54 adopted by reference unless otherwise listed	\$250-2,500	\$
57	16 TAC §9.301	NFPA 54 Section 7.1.2.1 underground piping cover requirements	\$250-750	\$
58	16 TAC §9.301	NFPA 54 Section 7.1.7.1 connection of plastic piping	\$500-1,000	\$
59	16 TAC §9.301	NFPA 54 Section 7.1.7.3 tracer wire	\$100-500	\$
60	16 TAC §9.301	NFPA 54 Section 7.7.2.1 cap all outlets	\$100-500	\$
61	16 TAC §9.301	NFPA 54 Section 8.2.3 test for leakage	\$1,500	\$
62	16 TAC §9.301	NFPA 54 Section 9.1.1.2 appliance installation	\$500-1,000	\$
63	16 TAC §9.301	NFPA 54 Section 9.6.8 sediment trap	\$100-500	\$
64	16 TAC §9.301	NFPA 54 Section 12.2.1 venting of appliances	\$500-1,000	\$
65	16 TAC §9.306	Room heaters in public buildings	\$250-1,000	\$

	LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
66	16 TAC §9.307	Identification of converted appliances	\$100-250	\$
67	16 TAC §9.308	Identification of piping installation	\$100-250	\$
68	16 TAC §9.311	Special exceptions for appliance connectors and piping support on agricultural and industrial structures	\$100-500	\$
69	16 TAC §9.312	Certification requirements for joining methods	\$500	\$
70	16 TAC §9.401	NFPA 58 adopted by reference unless otherwise listed	\$250-2,500	\$
71	16 TAC §9.401	NFPA 58 Section 6.4.1.1 (distance from container), first occurrence	\$500	\$
72	16 TAC §9.401	NFPA 58 Section 6.4.1.1 (distance from container), 2nd occurrence	\$750	\$
73	16 TAC §9.401	NFPA 58 Section 6.4.1.1 (distance from container), 3 or more occurrences	\$1,000	\$
74	16 TAC §9.401	NFPA 58 Section 5.2.2.3 and 11.3.1.5 (requalification of cylinders), 1-10 cylinders	\$500	\$
75	16 TAC §9.401	NFPA 58 Section 5.2.2.3 and 11.3.1.5 (requalification of cylinders), 11-20 cylinders	\$750	\$
76	16 TAC §9.401	NFPA 58 Section 5.2.2.3 and 11.3.1.5 (requalification of cylinders), >20 cylinders	\$1,000	\$
77	16 TAC §9.401	NFPA 58 Section 9.4.8 (chock blocks)	\$100-250	\$
78	16 TAC §9.403	Sections in NFPA 58 not adopted by reference or adopted with change or additional requirements	\$250-2,500	\$
79	Subtotal of typical penalty amounts from Table 1 (lines 1-78, inclusive)			\$
80	Reduction for settlement before hearing: up to 50% of line 79 amt.		%	\$
81	Subtotal: amount shown on line 79 less applicable settlement reduction on line 80			\$
Penalty enhancement amounts for threatened or actual safety hazard from Table 2				
82	Death or personal injury		\$5,000 to \$20,000	\$
83	Taking facility out of service		\$1,000 to \$5,000	\$
84	Gas ignition or release requiring emergency response		\$1,000 to \$15,000	\$
85	Damage to LP-gas installation or vehicle		\$1,000 to \$5,000	\$
86	Property damage exceeding \$5,000		\$1,000 to \$15,000	\$
87	Rerouting of traffic or evacuation of premises		\$1,000 to \$5,000	\$
Penalty enhancement for severity of violation from Table 2				
88	Time out of compliance		\$100 to \$2,000/ mo.	\$
89	Subtotal: amount shown on line 81 plus all amounts on lines 82 through 88, inclusive			\$
90	Reckless conduct of person charged		Up to double line 81	\$
91	Intentional conduct of person charged		Up to triple line 81	\$
Penalty enhancements for number of prior violations within past seven years from Table 3				
92	One		\$1,000	\$
93	Two		\$2,000	\$
94	Three		\$3,000	\$
95	Four		\$4,000	\$

	LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
96	Five or more		\$5,000	\$
Penalty enhancements for amount of penalties within past seven years from Table 4				
97	Less than \$10,000		\$1,000	\$
98	Between \$10,000 and \$25,000		\$2,500	\$
99	Between \$25,000 and \$50,000		\$5,000	\$
100	Between \$50,000 and \$100,000		\$10,000	\$
101	Over \$100,000		10% of total amount	\$
102	Subtotal: Line 89 amt. plus amts. on line 90 through 101, inclusive			\$
103	Reduction for demonstrated good faith of person charged			\$
104	TOTAL PENALTY AMOUNT: amount on line 102 less any amount shown on line 103			\$

Figure: 16 TAC §9.26(a)

**§9.26. INSURANCE REQUIREMENTS
TABLE 1 (Revised January 2020)**

Category of License	Type of Coverage	
All Except P	Workers' Compensation, including Employer's Liability or Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least \$150,000; accidental death benefits in the principal amount of at least \$100,000; loss of limb or sight on a scale based on principal amount of at least \$100,000; loss of income based on at least 60% of employee's pre-injury income for at least 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Workforce Commission	
A, A1, A1, B, C, E, O, H, J, and Registered Manufacturers	General liability coverage including: premises and operations in an amount of at least \$300,000 per occurrence and \$300,000 aggregate	
A, A1, A2, B, C, E, O, and Registered Manufacturers	Completed operations or products liability insurance, or both, in an amount of at least \$300,000 aggregate	
D, F, G, I, K, L, M, N, P	General liability coverage including: premises and operations in an amount of at least \$25,000 per occurrence with a \$50,000 policy aggregate	
C, E, H, J, Ultimate Consumer	Motor vehicle coverage: minimum \$500,000 (\$300,000 for state agencies) combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident	

Figure: 16 TAC §9.313

NFPA 54 Sections with Additional Requirements or Not Adopted (Effective September 1, 2020)		
Affected NFPA 54 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments
Chapter 7	additional requirements	See Commission rule '9.308, Identification of Piping Installation
9.1.3	additional requirements	See Commission rule '9.307, Identification of Converted Appliances.
9.6.2	additional requirements	See Commission rule '9.311(a), Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
10.22.3	additional requirements	See Commission rule '9.306, Room Heaters in Public Buildings.
10.28	not adopted	See Commission rule '9.303, Exclusion of NFPA 54, §10.28

Figure: 16 TAC §9.403(a)

§9.403 Table--Sections in NFPA 58, 2017 Edition, Not Adopted by Reference, or Adopted With Changes, Additional Requirements, or Corrections (Effective September 1, 2020)

Affected NFPA 58 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
3.2.2	additional requirement	In addition to definition for "Authority Having Jurisdiction," see Commission rule §9.402(a), Clarification of Certain Terms Used in NFPA 58.
4.3.1	not adopted	See Commission rules §9.27, Application for an Exception to a Safety Rule, and §9.101, Filings Required for Stationary LP-Gas Installations.
4.3.3	additional requirement	See Commission rule §9.101(b), Filings Required for Stationary LP-Gas Installations.
4.4	additional requirement	See Commission rules §§9.8, Requirements and Application for a New Certificate and 9.51, General Requirements for Training and Continuing Education.
5.2.1.1	additional requirement	See Commission rules §9.135, Unsafe of Unapproved Containers, Cylinders, or Piping, and §9.137, Inspection of Containers at Each Filling.
5.2.1.11	additional requirement	See Commission rule §9.116, Container Corrosion Protection System.
5.2.2	additional requirement	See Commission rules §9.135, Unsafe of Unapproved Containers, Cylinders, or Piping, and §9.137, Inspection of Containers at Each Filling.
5.2.4.2	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.
5.2.8.1	additional requirement	See Commission rules §9.140(g), Table 1, System Protection Requirements, and §9.141(e), Uniform Safety Requirements.
5.2.8.3 (A) and (B)	not adopted	See Commission rule §9.129, Manufacturer's Nameplate and Markings on ASME Containers.
5.2.8.3(C)	additional requirement	See Commission rule §9.129, Manufacturer's Nameplate and Markings on ASME Containers.
5.2.8.5	with changes	All containers that contain unodorized LP-gas products shall be marked "NOT ODORIZED" or " <u>NON-ODORIZED</u> ".
5.9.2.5(A)	additional requirement	See Commission rule §9.131, 200 PSIG Working Pressure Stationary Vessels.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
5.9.4.1	additional requirement	See Commission rule §9.143(c), Piping and Valve Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
Table 5.9.4.1(B)	with changes	Heading: Container Connection and Appurtenance Requirements [for Containers Used in Other Than Bulk Plants and Industrial Plants]
5.9.4.2	not adopted	See Commission rule §9.126(d), Appurtenances and Equipment.
Table 5.9.4.2	not adopted	See Commission Rule §9.126(d), Appurtenances and Equipment.
5.9.7.1	with changes	Other container openings shall be equipped with any of the following: (1) - (5) no change) (6) <u>For reducing the size of a container opening, only one bushing with a minimum pressure rating in accordance with Table 5.11.4.1 shall be installed.</u>
5.11.5	additional requirement	See Commission rule §9.308(d), Installation of Piping.
5.11.6	additional requirement	See Commission rule §9.143(g), Piping and Valve Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
5.11.6.5	additional requirement	See Commission rule §9.311, Special Exceptions for Agricultural and Industrial Structures Regarding Appliance Connectors and Piping Support.
5.23	additional requirement	See Commission rule §9.307, Identification of Converted Appliances.
6.2.2	with changes	LP-Gas containers shall be allowed in buildings only for the following applications: (1) - (7) (no change) [(8) Cylinders awaiting use, resale, or exchange when stored in accordance with Sections 8.2 and 8.3.]
6.4.1.1	additional requirement	See Commission rule §9.142, LP-Gas Container Storage and Installation Requirements.
6.4.1.2	not adopted	
6.5.1.1	with changes	Where [storage] containers [having an aggregate water capacity of more than 4000 gal (15.1 m³)] are located in heavily populated or congested areas, the siting provisions of 6.4.1.1 and Table 6.4.1.1 shall be permitted to be modified [as indicated] by the [fire safety analysis described in 6.29.3] Commission.
6.5.4.1	additional requirement	See Commission rule §9.141(f), Uniform Safety Requirements.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
6.8.1.2	additional requirement	See Commission rule §9.140(d), System Protection Requirements.
6.8.1.4	additional requirement	See Commission rule §9.141(a), Uniform Safety Requirements.
6.8.2.1	with changes	Cylinders shall be installed only aboveground and shall be set upon a firm foundation <u>of concrete, masonry, or metal</u> and or otherwise be firmly secured <u>against displacement</u> . (See 6.6.2.2)
6.8.3.1	with changes	Horizontal ASME containers designed for permanent installation in stationary aboveground service shall be placed on masonry or other noncombustible structural supports located on concrete or masonry foundations with the container supports. <u>Containers shall not be in contact with the soil.</u>
6.8.6.1(A) – (E)	additional requirement	See Commission rule §9.140(d), System Protection Requirements.
6.8.6.1(I)	additional requirement	See Commission rule §9.116, Container Corrosion Protection System.
6.8.6.2(A)	additional requirement	See Commission rule §9.116, Container Corrosion Protection System.
6.8.6.2(F)	additional requirement	See Commission rule §9.140(d), System Protection Requirements.
6.8.6.3(F)	additional requirement	See Commission rule §9.116, Container Corrosion Protection System.
6.10.2.3	with changes	Single-stage regulators shall not be installed in fixed piping systems <u>on or after February 1, 2001</u> [June 30, 1997] , except for installations covered in 6.10.2.4.
6.11.3.10	with changes	Aboveground piping shall be supported and protected against physical damage [by vehicles] .
6.11.3.14	additional requirement	See Commission rule §9.116, Container Corrosion Protection System.
6.11.3.16	with changes	Underground metallic piping, tubing or both that convey LP-Gas from <u>an underground partially buried or mounded</u> [a] gas storage container shall be provided with dielectric fittings installed above ground and outdoors at the building to electrically isolate it from the aboveground portion of the fixed piping system that enters a building.
6.11.6.1	additional requirement	See Commission rule §9.143, Piping and Valve Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
6.11.6.3	with changes	Flexible metallic connectors shall not exceed 5 ft (1.5m) in overall length when used with liquid or vapor piping on stationary containers [of 2000 gal (7.6 m³) water capacity or less] .

Affected NFPA 58 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
6.13.1	with changes	The requirements of 6.13.2 through 6.13.5 shall be required for internal valves in liquid <u>and/or vapor</u> service installed in containers of over 4000-gal (15.2-m ³) water capacity by July 1, 2003.
6.13.2	with changes	Internal valves shall be installed in accordance with <u>Commission rule §9.126(d)</u> [5.9.4.2 and Table 5.9.4.2] on containers over 4000 gal (15.2 m ³) water capacity.
6.13.3.1	with changes	Automatic shutdown of internal valves in liquid <u>and/or vapor</u> service shall be provided using thermal (fire) actuation.
6.13.4.1	with changes	At least one remote shutdown station for internal valves in liquid <u>and/or vapor</u> service shall be installed in accordance with the following: (1)-(3) no change
6.13.5	not adopted	See Commission rule §9.140(g), System Protection Requirements, Table 1.
6.14	not adopted	See Commission rule §9.143, Piping and Valve Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.
6.19.2	additional requirement	See Commission rule §116, Container Corrosion Protection System.
6.19.4	not adopted	
6.21.1	additional requirement	See Commission rule §9.113, Installation and Maintenance.
6.21.4.2	additional requirement	See Commission rule §9.140(c), System Protection Requirements.
6.22.3.2(3)	additional requirement	See Commission rule §9.140(c), System Protection Requirements.
6.22.9.3	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
6.22.9.4	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
6.25.2.4	with changes	The provision of 6.25.2.2 shall not apply to fixed electrical equipment at residential [or commercial] installations of LP-Gas systems or to systems covered by Section 6.26.
6.27.3.7	additional requirement	See Commission rule §9.140(c), System Protection Requirements.
6.27.3.8	with changes	The container liquid withdrawal opening used with <u>retail operated</u> vehicle fuel dispensers and <u>retail operated</u> dispensing stations shall be equipped with one of the following: (1) – (2) (No change)

Affected NFPA 58 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
6.27.3.13	with changes	Vehicular barrier protection (VBP) shall be provided for containers serving dispensers where those containers are located within 10 ft (3 m) of a vehicle thoroughfare or parking location in accordance with <u>§9.140(d), System Protection Requirements</u> [6.27.3.13(A) or 6.27.3.13(B)]. (A)-(B) not adopted
6.27.3.14	additional requirement	See Commission rule §9.140(d), System Protection Requirements.
6.27.3.15	additional requirement	See Commission rule §9.140(d), System Protection Requirements.
6.27.3.16	with changes	A listed quick-acting shutoff valve <u>or a listed quarter turn ball valve with a locking handle</u> shall be installed at the discharge end of the transfer hose.
6.27.3.17	additional requirement	See Commission rule §9.140, System Protection Requirements, Table 1.
6.27.4.1	additional requirement	See Commission rule §9.141(b)(3), Uniform Safety Requirements.
6.27.4.2	additional requirement	See Commission rule §9.141(b), Uniform Safety Requirements.
6.29.1	with changes	Section 6.29 shall apply to fire protection for industrial plants, bulk plants and dispensing systems <u>with an aggregate water capacity greater than 4,000 gallons.</u>
6.29.3.1	with changes	Fire protection shall be provided for installations with an aggregate water capacity of <u>10,000 gallons or more</u> [than 4000 gal (15.2 m³)] and for ASME containers on roofs.
6.29.3.2	with changes	The modes of fire protection shall be specified in a written fire safety analysis for new installations, for existing installations that have an aggregate water capacity of <u>10,000 gallons or more</u> [than 4000 gal (15.2 m³)], and for ASME containers on roofs. Existing installations shall comply with this requirement <u>within two years of the effective date of the amendments to §9.403, Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements</u> [within 2 years of the effective date of this code].
6.29.3.3	with changes	The fire safety analysis shall be submitted by the owner, operator, or their designee to the authority having jurisdiction, <u>upon request</u> , and local emergency responders.
6.30	with changes	Alternate Provisions for Installation of <u>Underground and Mounded ASME Containers</u>
<u>7.2.2.16</u>	<u>additional requirement</u>	<u>See Commission rule §9.137, Inspection of Cylinders at Each Filling</u>
7.2.3.8	additional requirement	See Commission rule §9.143(c)(2), Piping and Valve Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
7.4.2.1	additional requirement	See Commission rule §9.136, Filling of DOT Containers.
7.4.3.1	with changes	The volumetric method shall be limited to the following containers, where they are designed and equipped for filling by volume: [(1) Cylinders of less than 200 lb (91 kg) water capacity that are not subject to DOT jurisdiction] (2) Cylinders of <u>101 lb LP-gas capacity</u> [200 lb (91 kg) water capacity] or more (3) Cargo tanks or portable tanks (4) ASME and API-ASME containers complying with 5.2.1.1 or 5.2.4.2
8.2.1.1	additional requirement	See Commission rule §9.140(c), System Protection Requirements.
8.3.1	not adopted	
Table 8.3.1(a)	not adopted	
Table 8.3.1(b)	with changes	Heading: Maximum Allowable Storage Quantities of LP-Gas in [Mercantile,] Industrial, and Storage Occupancies Column (2) (Mercantile) Not Adopted
8.3.2	not adopted	See Commission rule §9.1(e), Application of Rules, Severability, and Retroactivity.
8.4.1.1	additional requirement	See Commission rule §9.141(i), Uniform Safety Requirements.
8.4.2.2	additional requirement	See Commission rule §9.140(h), System Protection Requirements.
8.4.3	not adopted	See Commission rule §9.27, Application for an Exception to a Safety Rule.
8.5.5	not adopted	See Commission rule §9.141(i), Uniform Safety Requirements.
9.4.6.2	additional requirement	See Commission rule §9.211, Markings.
9.4.8	with changes	<u>Any unit registered with the Commission</u> [Each cargo tank vehicle or trailer] shall utilize a wheel stop, in addition to the parking or hand brake, whenever the <u>unit</u> [cargo tank vehicle] is loading, unloading or parked, <u>to prevent the unit from unintended movement.</u>
9.6.2.2	with changes	<u>Valves and fittings shall be protected by a method</u> [approved by the authority having jurisdiction] <u>to minimize the possibility of damage.</u>
11.2	additional requirement	See Commission rules §§9.8, Requirements and Application for a New Certificate and 9.51, General Requirements for LP-Gas Training and Continuing Education.
11.3.4(A)	not adopted	See Commission rule §9.129, Manufacturer's Nameplate and Markings on ASME Containers.

Affected NFPA 58 Section	Specific Action	Commission Rule(s) to be Followed or Other Comments (underlining shows added language; strike-outs show deleted language)
12.3.4.2	with changes	The label marking shall consist of a border and the word PROPANE in letters not less than 1 in. (25 mm) in height, centered in the diamond, of silver or white reflective luminous material on a black or <u>Pantone 2945 C Royal Blue or equivalent</u> background.
12.5.4(5)	additional requirement	Each specific mounting bracket shall be marked in a visible location, to indicate the manufacturer of the bracket.
12.5.13(2)	additional requirement	See Commission rule §9.211(b), Markings.
Chapter 14	not adopted	Commission authority does not extend to marine shipping and receiving activities.
15.1	with changes	Scope. This chapter includes requirements related to the operations and maintenance of bulk plant, industrial plant, [refrigerated, marine] and pipeline LP-Gas systems. The provisions of this chapter apply to all new and existing installations. <u>Bulk plants and industrial plants with an aggregate water capacity of 10,000 gallons or more and all pipeline LP-Gas systems shall comply with this chapter. Existing installations shall comply within one year of the effective date of the amendments to §9.403, Sections in NFPA 58 Not Adopted by Reference, and Adopted with Changes or Additional Requirements.</u>

Figure: 16 TAC §82.120(b)

Barber Instructor - 750 hour curriculum standards		
(1)	instruction in theory, consisting of:	175 hours
	(A) lesson planning	15 hours
	(B) personality and professional conduct	15 hours
	(C) development of a barber course	15 hours
	(D) student learning principles	10 hours
	(E) principles of teaching	35 hours
	(F) basic teaching methods	35 hours
	(G) teaching aids	10 hours
	(H) testing	10 hours
	(I) self evaluation	10 hours
	(J) teaching adults	10 hours
	(K) classroom problems	5 hours
	(L) classroom management	5 hours
(2)	instruction in practical work, consisting of:	575 hours
	(A) assisting with students	350 hours
	(B) theory class (assisting teacher, observing, teaching)	150 hours
	(C) learning office procedures and state laws	50 hours
	(D) grading test papers (assisting teacher, observing, grading)	25 hours

Figure: 16 TAC §82.120(c)

BARBER INSTRUCTOR - 500 HOUR WITH 1 YEAR EXPERIENCE CURRICULUM STANDARDS		
(1)	instruction in theory, consisting of:	125 hours
	(A) lesson planning	15 hours
	(B) personality and professional conduct	15 hours
	(C) development of a barber course	15 hours
	(D) student learning principles	10 hours
	(E) principles of teaching	10 hours
	(F) basic teaching methods	10 hours
	(G) teaching aids	10 hours
	(H) testing	10 hours
	(I) self evaluation	10 hours
	(J) teaching adults	10 hours
	(K) classroom problems	5 hours
	(L) classroom management	5 hours
(2)	instruction in practical work, consisting of:	375 hours
	(A) assisting with students	250 hours
	(B) theory class (assisting teacher, observing, teaching)	50 hours
	(C) learning office procedures and state laws	50 hours
	(D) grading test papers (assisting teacher, observing, grading)	25 hours

Figure: 16 TAC §82.120(d)

<u>Basics: anatomy and physiology; disorders of the skin, scalp, hair and nails; chemistry (haircoloring, chemical waving, and relaxing); bacteriology, sterilization and sanitation; safety, first aid, and sanitation; barber implements, tools, equipment and related theory; and history of barbering</u>	<u>150</u>
<u>Practice: shaving; mustaches and beards; haircutting; hairstyling; hair and scalp treatments, scalp massage; safety, first aid, and sanitation; hairweaving, extensions, and wigs; face and neck massage and treatments; facial hair removal; manicuring; chemistry (haircoloring, chemical waving, and relaxing); and razor techniques, safety, first aid, and sanitation.</u>	<u>750</u>
<u>Business: Texas barber laws and rules; customer service; barbershop management; professional ethics and image; safety, sanitation, related practices and theory; and hygiene and good grooming</u>	<u>100</u>
<u>TOTAL</u>	<u>1,000</u>

[PRIVATE AND PUBLIC POST SECONDARY BARBER SCHOOL CLASS A BARBER CURRICULUM]			
[(1)]	[theory, consisting of:]		[180 hours]
	[(A)]	[anatomy, physiology, and histology, consisting of the study of:]	[50 hours]
		[(i)] [Hair]	
		[(ii)] [Skin]	
		[(iii)] [Muscles]	
		[(iv)] [Nerves]	
		[(v)] [Cells]	
		[(vi)] [Circulatory system]	
		[(vii)] [Digestion]	
		[(viii)] [Bones]	
	[(B)]	[Texas barber law and rules]	[35 hours]
	[(C)]	[bacteriology, sterilization, and sanitation]	[30 hours]
	[(D)]	[disorders of the skin, scalp, and hair]	[10 hours]
	[(E)]	[salesmanship]	[5 hours]
	[(F)]	[barbershop management]	[5 hours]
	[(G)]	[chemistry]	[5 hours]
	[(H)]	[shaving]	[5 hours]
	[(I)]	[scalp, hair treatments and skin]	[5 hours]
	[(J)]	[sanitary professional techniques]	[4 hours]
	[(K)]	[professional ethics]	[4 hours]

	{(L)}	{scientific fundamentals of barbering}	{4 hours}
	{(M)}	{cosmetic preparations}	{3 hours}
	{(N)}	{shampooing and rinsing}	{2 hours}
	{(O)}	{cutting and processing curly and over-curly hair}	{2 hours}
	{(P)}	{hairecutting, male and female}	{2 hours}
	{(Q)}	{theory of massage of scalp, face and neck}	{2 hours}
	{(R)}	{hygiene and good grooming}	{1 hour}
	{(S)}	{barber implements}	{1 hour}
	{(T)}	{honing and stropping}	{1 hour}
	{(U)}	{mustaches and beards}	{1 hour}
	{(V)}	{facial treatments}	{1 hour}
	{(W)}	{electricity and light therapy}	{1 hour}
	{(X)}	{history of barbering}	{1 hour}
{(2)}		{instruction in practical work, consisting of the study of:}	{1320 hours}
	{(A)}	{dressing the hair, consisting of:}	{800 hours}
		{(i)} {men's haircutting}	
		{(ii)} {children's haircutting}	
		{(iii)} {women's haircutting}	
		{(iv)} {cutting and processing curly and over-curly hair}	
		{(v)} {razor cutting}	
	{(B)}	{shaving}	{80 hours}
	{(C)}	{styling}	{55 hours}
	{(D)}	{shampooing and rinsing}	{40 hours}
	{(E)}	{bleaching and dyeing of the hair}	{30 hours}
	{(F)}	{waving hair}	{28 hours}
	{(G)}	{straightening}	{25 hours}
	{(H)}	{cleansing}	{25 hours}
	{(I)}	{professional ethics}	{22 hours}
	{(J)}	{barbershop management}	{22 hours}
	{(K)}	{hair weaving and hairpieces}	{17 hours}
	{(L)}	{processing}	{15 hours}
	{(M)}	{clipping}	{15 hours}
	{(N)}	{beards and mustaches}	{15 hours}

	{(O)}	{shaping}	{15 hours}
	{(P)}	{dressing}	{15 hours}
	{(Q)}	{curling}	{15 hours}
	{(R)}	{first aid and safety precautions}	{11 hours}
	{(S)}	{scientific fundamentals of barbering}	{10 hours}
	{(T)}	{barber implements}	{10 hours}
	{(U)}	{haircutting or the process of cutting, tapering, trimming, processing, and molding and scalp, hair treatments, and tonics}	{10 hours}
	{(V)}	{massage and facial treatments}	{10 hours}
	{(W)}	{arranging}	{10 hours}
	{(X)}	{beautifying}	{10 hours}
	{(Y)}	{singeing}	{7 hours}
	{(Z)}	{manicuring}	{8 hours}

Figure: 16 TAC §82.120(e)

Cosmetology Operator to Class A Barber curriculum <u>standards</u>		
(1)	Instruction in theory, consisting of:	25 Hours
(A)	History of Barbering	1
(B)	Barber Laws and Rules Review	1
(C)	Implements, Honing, and Stropping	5
(D)	Shaving	5
(E)	Men's Haircutting and tapering	5
(F)	Beard and Mustache Trimming and Design	1
(G)	Hair color Review	1
(H)	Permanent Waving and Relaxing Review	1
(I)	Manicuring and Nail Care Review	1
(J)	Facial Treatments and Skin Care Review	1
(K)	Anatomy and Physiology Review	1
(L)	Blow-dry Styling Review	1
(M)	Shampooing and Conditioning Review	1
(2)	Instruction in practical work, consisting of:	275 Hours
(A)	Men's Haircutting and tapering	165
(B)	Shaving, Mustache and Beard Trimming	85
(C)	Hair coloring	5
(D)	Permanent Waving and Relaxing	5
(E)	Facial Treatments	5
(F)	Shampooing and Conditioning and Blow-dry Styling	5
(G)	Manicuring	5

Figure: 16 TAC §82.120(f)

<u>Basics: anatomy and physiology; disorders of the skin, scalp, hair and nails; chemistry (haircoloring, chemical waving, and relaxing); bacteriology, sterilization and sanitation; safety, first aid, and sanitation; barber implements, tools, equipment and related theory; and history of barbering</u>	<u>150</u>
<u>Practice: shaving; mustaches and beards; haircutting; hairstyling; hair and scalp treatments, scalp massage; safety, first aid, and sanitation; hairweaving, extensions, and wigs; face and neck massage and treatments; facial hair removal; manicuring; chemistry (haircoloring, chemical waving, and relaxing); and razor techniques, safety, first aid, and sanitation.</u>	<u>750</u>
<u>Business: Texas barber laws and rules; customer service; barbershop management; professional ethics and image; safety, sanitation, related practices and theory; and hygiene and good grooming</u>	<u>100</u>
<u>TOTAL</u>	<u>1,000</u>

{PUBLIC SECONDARY CLASS A BARBER CURRICULUM FOR HIGH SCHOOL STUDENTS>for high school students}			
{(1)}	{Theory, consisting of the study of:}		
	{(A)}	{anatomy, physiology, and histology, consisting of the study of:}	{50 hours}
		{(i)} {Hair}	
		{(ii)} {Skin}	
		{(iii)} {Muscles}	
		{(iv)} {Nerves}	
		{(v)} {Cells}	
		{(vi)} {Circulatory system}	
		{(vii)} {Digestion}	
		{(viii)} {Bones}	
	{(B)}	{Texas barber law and rules}	{25 hours}
	{(C)}	{bacteriology, sterilization, and sanitation}	{30 hours}
	{(D)}	{disorders of the skin, scalp, and hair}	{5 hours}
	{(E)}	{salesmanship}	{1 hour}
	{(F)}	{barbershop management}	{1 hour}
	{(G)}	{chemistry}	{1 hour}
	{(H)}	{shaving}	{1 hour}
	{(I)}	{scalp, hair treatments and skin}	{1 hour}
	{(J)}	{sanitary professional techniques}	{1 hour}
	{(K)}	{professional ethics}	{1 hour}

	[(L)]	[scientific fundamentals of barbering]	[1 hour]
	[(M)]	[cosmetic preparations]	[1 hour]
	[(N)]	[shampooing and rinsing]	[1 hour]
	[(O)]	[cutting and processing curly and over-curly hair]	[1 hour]
	[(P)]	[hairecutting, male and female]	[1 hour]
	[(Q)]	[theory of scalp, face and neck massage]	[1 hour]
	[(R)]	[hygiene and good grooming]	[1 hour]
	[(S)]	[barber implements]	[1 hour]
	[(T)]	[honing and stropping]	[1 hour]
	[(U)]	[mustaches and beards]	[1 hour]
	[(V)]	[facial treatments]	[1 hour]
	[(W)]	[electricity and light therapy]	[1 hour]
	[(X)]	[history of barbering]	[1 hour]
[(2)]	[instruction in practical work, consisting of the study of:]		
	[(A)]	[dressing the hair, consisting of:]	[500 hours]
		[(i)] [men's hairecutting]	
		[(ii)] [children's hairecutting]	
		[(iii)] [women's hairecutting]	
		[(iv)] [cutting and processing curly and over curly hair]	
		[(v)] [razor cutting]	
	[(B)]	[shaving]	[80 hours]
	[(C)]	[styling]	[50 hours]
	[(D)]	[shampooing and rinsing]	[30 hours]
	[(E)]	[hair bleaching and dyeing]	[20 hours]
	[(F)]	[waving hair]	[25 hours]
	[(G)]	[straightening]	[25 hours]
	[(H)]	[cleansing]	[20 hours]
	[(I)]	[professional ethics]	[20 hours]
	[(J)]	[hair weaving and hairpieces]	[5 hours]
	[(K)]	[processing]	[5 hours]
	[(L)]	[Clipping]	[5 hours]
	[(M)]	[beards and mustaches]	[6 hours]
	[(N)]	[shaping]	[5 hours]

{(O)}	{dressing}	{5 hours}
{(P)}	{curling}	{5 hours}
{(Q)}	{first aid and safety precautions}	{5 hours}
{(R)}	{scientific fundamentals of barbering}	{5 hours}
{(S)}	{barber implements}	{5 hours}
{(T)}	{ haircutting or the process of cutting, tapering, trimming, processing, and molding and scalp, hair treatments, and tonics }	{10 hours}
{(U)}	{massage and facial treatments}	{10 hours}
{(V)}	{arranging}	{10 hours}
{(W)}	{beautifying}	{10 hours}
{(X)}	{singeing}	{1 hours}
{(Y)}	{manicuring}	{8 hours}

Figure: 16 TAC §82.120(g)

MANICURIST CURRICULUM <u>STANDARDS</u>		
(1)	instruction in theory, consisting of:	45 hours
	(A) bacteriology, sterilization, and sanitation	16 hours
	(B) manicuring, equipment, and procedures	4 hours
	(C) the nail and disorders	4 hours
	(D) Texas barber law and rules	4 hours
	(E) anatomy and physiology	4 hours
	(F) skin	4 hours
	(G) professional ethics	3 hours
	(H) hygiene and good grooming	3 hours
	(I) advanced nail techniques	3 hours
(2)	instruction in practical work, consisting of:	555 hours
	(A) shaping nails	96 hours
	(B) applying polish	74 hours
	(C) trimming cuticle and buffing nails	59 hours
	(D) hand and arm massage	57 hours
	(E) removal of polish	57 hours
	(F) application of artificial and gel nails	44 hours
	(G) applying cuticle remover and loosening	40 hours
	(H) preparation of manicure table	40 hours
	(I) softening cuticle	37 hours
	(J) Bleaching under free edge	18 hours
	(K) cleaning under free edge	18 hours
	(L) applying cuticle oil or cream	15 hours

Figure: 16 TAC §82.120(h)

BARBER TECHNICIAN/MANICURIST CURRICULUM <u>STANDARDS</u>		
THEORY		
A	Bacteriology, sterilization, and sanitation hygiene (M/T)	37 hours
B	Manicuring, equipment, and procedures (M)	4 hours
C	The nail and disorders (M)	4 hours
D	Texas barber law and rules (M/T)	8 hours
E	Anatomy and physiology (M)	4 hours
F	Skin (M)	4 hours
G	Professional ethics (M/T)	7 hours
H	Advanced nail techniques (M)	3 hours
I	Common disorders of the skin; facial treatments (T)	4 hours
J	Shampooing, equipment, and procedures (T)	4 hours
K	Cosmetic applications and massage (T)	3 hours
L	Good grooming; preparing patron and making appointments (T)	3 hours
M	Theory of massage, and structure of head, neck, and face (T)	2 hours
N	Rinsing, types and procedures (T)	2 hours
O	Scalp and hair treatments (T)	2 hours
PRACTICAL		
A	Shaping nails (M)	96 hours
B	Applying polish (M)	74 hours
C	Trimming cuticle and buffing nails (M)	59 hours
D	Hand and arm massage (M)	57 hours
E	Removal of polish (M)	57 hours
F	Application of artificial and gel nails (M)	44 hours
G	Applying cuticle remover and loosening	40 hours
H	Preparation of manicure table (M)	40 hours
I	Softening cuticle (M)	37 hours
J	Bleaching under free edge (M)	18 hours
K	Cleaning under free edge (M)	18 hours
L	Applying cuticle oil or cream (M)	15 hours
M	Application of shampoo and shampooing (T)	45 hours
N	Application of rinses and removal (T)	35 hours
O	Makeup application (T)	33 hours
P	Facial manipulations (T)	20 hours

Q	Application of conditioner and rinsing (T)	20 hours
R	Scalp manipulations (T)	20 hours
S	Brushing and drying (T)	18 hours
T	Sanitation and sterilization (T)	15 hours
U	Draping and scalp examination (T)	11 hours
V	Application and removal of creams (T)	10 hours
W	Application and removal of packs (T)	8 hours
X	Set-up for facial (T)	8 hours
Y	Preparation of work area for shampooing (T)	7 hours
Z	Patron protection (T)	5 hours

Figure: 16 TAC §82.120(i)

BARBER TECHNICIAN/HAIR WEAVING CURRICULUM STANDARDS		
THEORY		
A	Hygiene, bacteriology, sterilization, and sanitation (T/H)	28 hours
B	Common disorders of the skin; facial treatments and theory of massage (T)	4 hours
C	Shampooing, equipment, and procedures (T/H)	4 hours
D	Texas barber law and rules (T/H)	4 hours
E	Cosmetic applications and massage	3 hours
F	Professional ethics (T)	3 hours
G	Good grooming; preparing patron and making appointments (T/H)	5 hours
H	Anatomy and physiology-scalp: theory of head, neck, and face. Bones, major muscles, major nerves and functions, skin structures, appendages, conditions and lesions, structure, []hair regularities, hair and scalp diseases (T/H)	30 hours
I	Composition of hair or fiber used (H)	2 hours
J	Rinsing, types and procedures (T/H)	2 hours
K	Chemistry of compounds, and mixtures, composition and uses of cosmetics in hair weaving and facial treatments (T/H)	2 hours
L	Scalp and hair treatments (T/H)	2 hours
PRACTICAL		
A	Definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings Basic hair weaving, repair on hair weaving, removal of weft, sizing and finishing.	150 hours
B	Professional practices: vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations including purpose, effect, equipment, implements, supplies, and preparation (T/H)	40 hours
C	Application of shampoo and shampooing (T/H)	45 hours
D	Application of rinses and removal (T)	35 hours
E	Makeup application (T)	33 hours
F	Facial manipulations (T)	20 hours
G	Application of conditioner and rinsing (T/H)	20 hours
H	Shampooing client, weft and extensions (H)	50 hours
I	Scalp manipulations (T/H)	20 hours
J	Brushing and drying (T/H)	18 hours
K	Draping and scalp examination (T/H)	11 hours

L	Application and removal of creams (T)	10 hours
M	Application and removal of packs (T)	8 hours
N	Set-up for facial (T)	8 hours
O	Preparation of work area for shampooing (T/H)	7 hours
P	Safety measures: client protection (T/H)	28 hours
Q	Chemistry in hair weaving Elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving (H)	8 hours

Figure: 16 TAC §82.120(j)

BARBER TECHNICIAN CURRICULUM <u>STANDARDS</u>		
(1)	instruction in theory, consisting of:	45 hours
	(A) hygiene, bacteriology, sterilization, and sanitation	18 hours
	(B) common disorders of the skin; facial treatments	4 hours
	(C) shampooing, equipment, and procedures	4 hours
	(D) Texas barber law and rules	4 hours
	(E) cosmetic applications and massage	3 hours
	(F) professional ethics	3 hours
	(G) good grooming; preparing patron and making appointments	3 hours
	(H) theory of massage, and structure of head, neck, and face	2 hours
	(I) rinsing, types and procedures	2 hours
	(J) scalp and hair treatments	2 hours
(2)	instruction in practical work, consisting of:	255 hours
	(A) application of shampoo and shampooing	45 hours
	(B) application of rinses and removal	35 hours
	(C) makeup application	33 hours
	(D) facial manipulations	20 hours
	(E) application of conditioner and rinsing	20 hours
	(F) scalp manipulations	20 hours
	(G) brushing and drying	18 hours
	(H) sanitation and sterilization	15 hours
	(I) draping and scalp examination	11 hours
	(J) application and removal of creams	10 hours
	(K) application and removal of packs	8 hours
	(L) set-up for facial	8 hours
	(M) preparation of work area for shampooing	7 hours
	(N) patron protection	5 hours

Figure: 16 TAC §82.120(k)

Hair Weaving Curriculum <u>Standards</u>	
(1) Hair weaving:	150 hours
Basic hair weaving, repair on hair weaving, removal of weft, sizing and finishing	
(2) Shampooing client, weft and extensions:	50 hours
Basic shampooing, basic conditioners, semi-permanent and weakly rinses, basic hair drying, draping	
(3) Professional practices:	40 hours
Hair weaving as a profession, vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations, hair weaving/braiding skills, including purpose, effect, equipment, implements, supplies, and preparation	
(4) Anatomy and physiology-scalp:	30 hours
Major bones and functions, major muscles and functions, major nerves and functions, skin structures, functions, appendages, conditions and lesions, hair or fiber used, structure, composition, hair regularities, hair and scalp diseases	
(5) Chemistry in hair weaving:	10 hours
Elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving	
(6) Sanitation and safety measures:	10 hours
Definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings	
(7) Safety measures: client protection	10 hours

Figure: 16 TAC §83.120(a)

PRIVATE AND PUBLIC POST-SECONDARY COSMETOLOGY SCHOOLS AND PUBLIC SECONDARY PROGRAMS FOR HIGH SCHOOL STUDENTS (1000 1500 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
<u>Hair care</u>	<u>Cutting, styling, coloring, chemical textures, and related theory and application; business skills; professional development and salon management; health; safety; and laws</u>	<u>800 hours</u>
<u>Nail care</u>	<u>Manicuring and related theory and applications, business skills; professional development and salon management; health; safety; and laws</u>	<u>100 hours</u>
<u>Skin care</u>	<u>Facials, hair removal, and related theory and application; business skills; professional development and salon management; health; safety; and laws</u>	<u>100 hours</u>
[(A)]	[Haircutting, styling and related theory]	[500 hours]
[(B)]	[Hair coloring and related theory]	[200 hours]
[(C)]	[Cold waving and related theory]	[200 hours]
[(D)]	[Orientation, rules and laws]	[100 hours]
[(E)]	[Manicuring and related theory]	[100 hours]
[(F)]	[Shampoo and related theory]	[100 hours]
[(G)]	[Chemistry]	[75 hours]
[(H)]	[Salon management and practices]	[75 hours]
[(I)]	[Hair and scalp treatment and related theory]	[50 hours]
[(J)]	[Chemical hair relaxing and related theory]	[50 hours]
[(K)]	[Facials and related theory]	[50 hours]
[PUBLIC SECONDARY PROGRAMS FOR HIGH SCHOOL STUDENTS] [(1000 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)]		
[(A)]	[Haircutting, styling, and related theory]	[400 hours]
[(B)]	[Hair coloring and related theory]	[150 hours]
[(C)]	[Cold waving and related theory]	[100 hours]
[(D)]	[Manicuring and related theory]	[100 hours]
[(E)]	[Orientation, rules and laws]	[75 hours]

{(F)}	{Shampoo and related theory}	{75 hours}
{(G)}	{Chemical hair relaxing and related theory}	{50 hours}
{(H)}	{Facials and related theory}	{25 hours}
{(I)}	{Hair and scalp treatment and related theory}	{25 hours}
CLASS A BARBER TO COSMETOLOGY OPERATOR (300 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Haircutting, styling and related theory	30 hours
(B)	Hair coloring and related theory	50 hours
(C)	Permanent waving including chemical hair relaxing and related theory	30 hours
(D)	Orientation, rules and laws	20 hours
(E)	Manicuring and related theory	50 hours
(F)	Shampoo and related theory	10 hours
(G)	Chemistry	20 hours
(H)	Salon management and practices	10 hours
(I)	Hair and scalp treatment and related theory	5 hours
(J)	Facials and related theory	75 hours

Figure: 16 TAC §83.120(b)

ESTHETICIAN CURRICULUM <u>STANDARDS</u> (750 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	facial treatment, cleansing, masking, therapy	225 hours
(B)	anatomy and physiology	90 hours
(C)	electricity, machines, and related equipment	75 hours
(D)	Makeup	75 hours
(E)	orientation, rules and laws	50 hours
(F)	Chemistry	50 hours
(G)	care of client	50 hours
(H)	sanitation, safety, and first aid	40 hours
(I)	Management	35 hours
(J)	superfluous hair removal	25 hours
(K)	aroma therapy	15 hours
(L)	Nutrition	10 hours
(M)	color psychology	10 hours
MANICURE CURRICULUM <u>STANDARDS</u> (600 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	procedures: basic manicure and pedicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of polish, application of artificial nails, application of cosmetic fingernails, preparation to build new nail, and application of nail extensions, sculptured nails, tips, wraps, fiberglass/gels and odorless products	320 hours
(B)	bacteriology, sanitation and safety: definitions, importance, rules, laws, methods, safety measures, hazardous chemicals and ventilation odor in salons	100 hours
(C)	professional practices: manicuring as a profession, vocabulary, ethics, salon procedures, hygiene and grooming, professional attitudes, salesmanship and public relations	80 hours
(D)	arms and hands: major bones and functions, major muscles and functions, major nerves and functions, skin structure, functions,	70 hours

	appendages, conditions and lesions, nails structure, composition, growth, regeneration, irregularities and diseases	
(E)	orientation, rules, laws and preparation	15 hours
(F)	equipment, implements and supplies	15 hours
ESTHETICIAN/MANICURE CURRICULUM STANDARDS (1200 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Orientation, rules, laws and preparation(F and M)	30 hours
(B)	Electricity, machines, related equipment, implements and supplies (F and M)	90 hours
(C)	Facial treatment, cleansing, masking, therapy (F)	215 hours
(D)	Procedures - basic manicure and pedicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of polish, application of artificial nails, application of cosmetic fingernails, preparation to build new nail, and application of nail extensions, sculptured nails, tips, wraps, fiberglass/gels and odorless products (M)	310 hours
(E)	Anatomy and physiology (F)	50 hours
(F)	Arms and hands - major bones and functions, major muscles and functions, major nerves and functions, skin structure, functions, appendages, conditions and lesions, nails structure, composition, growth, regeneration, irregularities and diseases (M)	50 hours
(G)	Makeup (F)	75 hours
(H)	Chemistry (F)	30 hours
(I)	Sanitation, safety, and first aid (F)	40 hours
(J)	Care of client (F)	50 hours
(K)	Management (F)	20 hours
(L)	Superfluous hair removal (F)	25 hours
(M)	Aroma therapy (F)	15 hours
(N)	Nutrition (F)	10 hours
(O)	Color psychology (F)	10 hours
(P)	Bacteriology, sanitation and safety - definitions, importance, rules, laws, methods, safety measures, hazardous chemicals and ventilation odor in salons (M)	100 hours

(Q)	Professional practices - manicuring as a profession, vocabulary, ethics, salon procedures, hygiene and grooming, professional attitudes, salesmanship and public relations (M)	80 hours
EYELASH EXTENSION CURRICULUM STANDARDS (320 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Orientation, rules and law	10 hours
(B)	First aid and adverse reactions	15 hours
(C)	Sanitation and contagious diseases	20 hours
(D)	Safety and client protection	10 hours
(E)	Eyelash growth cycles and selection	20 hours
(F)	Chemistry of products	5 hours
(G)	Supplies, materials and related equipment	10 hours
(H)	Eyelash extension application	190 hours
(I)	Eyelash extension isolation and separation	15 hours
(J)	Eye shapes	15 hours
(K)	Professional image/salon management	10 hours
HAIR WEAVING CURRICULUM STANDARDS (300 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Hair weaving: Basic hair weaving, repair on hair weaving, removal of weft, sizing and finishing by hand of hair ends or by using mechanical equipment	150 hours
(B)	shampooing client, weft and extensions: Basic shampooing, basic conditioners, semi-permanent and weakly rinses, basic hair drying, draping	50 hours
(C)	professional practices: Hair weaving as a profession, vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations, hair weaving/braiding skills, including purpose, effect, equipment, implements, supplies, and preparation	40 hours
(D)	anatomy and physiology-scalp: major bones and functions, major muscles and functions, major nerves and functions, skin structures, functions, appendages, conditions and lesions, hair or fiber used, structure, composition, hair regularities, hair and scalp diseases	30 hours

(E)	chemistry in hair weaving: elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving	10 hours
(F)	sanitation and safety measures: definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings	10 hours
(G)	safety measures: client protection	10 hours
WIG CURRICULUM STANDARDS (300 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	combing out	50 hours
(B)	Styling	50 hours
(C)	Coloring, tinting, bleaching	37 hours
(D)	Rolling	30 hours
(E)	cutting and shaping, scissors and razor	20 hours
(F)	hot iron	19 hours
(G)	Cleaning	10 hours
(H)	alterations, installation of elastic	10 hours
(I)	Conditioning	10 hours
(J)	brushing technique prior to styling	10 hours
(K)	identification and recognition definition-wigs, wiggery, wigology-pertaining to any human, synthetic, or animal hairpiece	10 hours
(L)	sanitation, disinfecting, required rules and laws	10 hours
(M)	eye tabbing	10 hours
(N)	Sizing	5 hours
(O)	Drying	5 hours
(P)	measuring head for proper size	5 hours
(Q)	preparation of wig on block	5 hours
(R)	history, background, and salesmanship	3 hours
(S)	knowledge of coloring: J L	1 hour

Figure: 19 TAC Chapter 230 - Preamble

The proposed amendment to §230.21(e) would amend Figure: 19 TAC §230.21(e) to provide for a transition from the current content tests to the anticipated content pedagogy tests as follows:

Certificate Name	Current Test to Anticipated Content Test
§233.12, Physical Education: Early Childhood-Grade 12	158 Physical Education EC-12 TExES to 258 Physical Education EC-12 TExES
§233.3, English Language Arts and Reading: Grades 4-8	117 English Language Arts and Reading 4-8 TExES to 217 English Language Arts and Reading 4-8
§233.2, Core Subjects: Early Childhood-Grade 6	291 Core Subjects EC-6 TExES to 2391 Core Subjects EC-6 TExES
§239.84, Educational Diagnostician: Early Childhood-Grade 12	153 Educational Diagnostician EC-12 TExES to 253 Educational Diagnostician EC-12
§239.20, School Counselor: Early Childhood-Grade 12	152 School Counselor EC-12 TExES to 252 School Counselor EC-12 TExES
§233.14, Trade and Industrial Education: Grades 6-12	270 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES to 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES

Figure: 19 TAC §230.21(e)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Art			
§233.10	Art: Early Childhood-Grade 12	178 Art EC-12 Texas Examinations of Educator Standards (TExES)	160 Pedagogy and Professional Responsibilities (PPR) EC-12 TExES or 2015 edTPA: Visual Arts (pilot exam)
Bilingual Education			
§233.6	Bilingual Education Supplemental: Spanish	164 Bilingual Education Supplemental TExES and 190 Bilingual Target Language Proficiency (BTLPT) – Spanish TExES	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: American Sign Language	164 Bilingual Education Supplemental TExES and 184 American Sign Language (ASL) EC-12 TExES and 073 Texas Assessment of Sign Communications- American Sign Language (TASC-ASL)	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Arabic	164 Bilingual Education Supplemental TExES and American Council for the Teaching of Foreign Languages (ACTFL) 614 Oral Proficiency Interview (OPI) – Arabic and 615 Writing Proficiency Test (WPT) – Arabic	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Chinese	164 Bilingual Education Supplemental TExES and ACTFL 618 OPI – Chinese (Mandarin) and 619 WPT – Chinese (Mandarin)	Not Applicable: Not a Stand-alone Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Bilingual Education (continued)			
§233.6	Bilingual Education Supplemental: Japanese	164 Bilingual Education Supplemental TExES and ACTFL 616 OPI – Japanese and 617 WPT – Japanese	Not Applicable: Not a Stand-alone Certificate
§233.6	Bilingual Education Supplemental: Vietnamese	164 Bilingual Education Supplemental TExES and ACTFL 620 OPI – Vietnamese and 621 WPT – Vietnamese	Not Applicable: Not a Stand-alone Certificate
Career and Technical Education			
§233.13	Technology Education: Grades 6-12	171 Technology Education 6-12 TExES	160 PPR EC-12 TExES or 2143 edTPA: Technology and Engineering Education (pilot exam)
§233.13	Family and Consumer Sciences, Composite: Grades 6-12	American Association of Family and Consumer Sciences (AAFCS) 200 Family and Consumer Sciences – Composite Examination	160 PPR EC-12 TExES or 2117 edTPA: Family and Consumer Sciences (pilot exam)
§233.13	Human Development and Family Studies: Grades 8-12	AAFCS 202 Human Development and Family Studies Concentration Examination	160 PPR EC-12 TExES or 2117 edTPA: Family and Consumer Sciences (pilot exam)
§233.13	Hospitality, Nutrition, and Food Sciences: Grades 8-12	AAFCS 201 Hospitality, Nutrition, and Food Science Concentration Examination	160 PPR EC-12 TExES or 2117 edTPA: Family and Consumer Sciences (pilot exam)
§233.13	Agriculture, Food, and Natural Resources: Grades 6-12	272 Agriculture, Food, and Natural Resources 6-12 TExES	160 PPR EC-12 TExES or 2100 edTPA: Agricultural Education (pilot exam)
§233.13	Business and Finance: Grades 6-12	276 Business and Finance 6-12 TExES	160 PPR EC-12 TExES or 2102 edTPA: Business Education (pilot exam)
§233.14	Marketing: Grades 6-12	275 Marketing 6-12 TExES	160 PPR EC-12 TExES or 2102 edTPA: Business Education (pilot exam)
§233.14	Health Science: Grades 6-12	273 Health Science 6-12 TExES	160 PPR EC-12 TExES

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Career and Technical Education (continued)			
§233.14	Trade and Industrial Education: Grades 6-12	Not Applicable	270 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES (<u>last operational date 8/31/2021</u>) Starting 9/1/2021 370 <u>Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES</u>
<u>§233.14</u>	<u>Trade and Industrial Workforce Training: Grades 6-12</u>	<u>Not Applicable</u>	<u>370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES</u>
Computer Science and Technology Applications			
§233.5	Computer Science: Grades 8-12	241 Computer Science 8-12 TExES	160 PPR EC-12 TExES or 2143 edTPA: Technology and Engineering Education (pilot exam)
§233.5	Technology Applications: Early Childhood-Grade 12	242 Technology Applications EC-12 TExES	160 PPR EC-12 TExES or 2108 edTPA: Educational Technology Specialist (pilot exam)
Core Subjects			
§233.2	Core Subjects: Early Childhood-Grade 6	291 Core Subjects EC-6 TExES (<u>last operational date 12/31/2020</u>) Starting 1/1/2021 391 <u>Core Subjects EC-6 TExES and 293 Science of Teaching Reading TExES</u>	160 PPR EC-12 TExES or 2110 edTPA: Elementary Education: Literacy with Mathematics Task 4 (pilot exam)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Core Subjects (continued)			
§233.2	Core Subjects: Grades 4-8	211 Core Subjects 4-8 TExES and 293 Science of Teaching Reading TExES (starting 1/1/2021)	160 PPR EC-12 TExES or 2016 edTPA: Middle Childhood Mathematics (pilot exam) or 2017 edTPA: Middle Childhood Science (pilot exam) or 2018 edTPA: Middle Childhood English-Language Arts (pilot exam) or 2019 edTPA: Middle Childhood History/Social Studies (pilot exam)
Counselor			
§239.20	School Counselor: Early Childhood-Grade 12	152 School Counselor EC-12 TExES (last operational date 8/31/2021) Starting 9/1/2021 252 School Counselor EC-12 TExES	Not Applicable: Not an Initial Certificate
Dance			
§233.10	Dance: Grades 6-12	279 Dance 6-12 TExES	160 PPR EC-12 TExES or 2021 edTPA: K-12 Performing Arts (pilot exam)
Early Childhood			
<u>§233.2</u>	<u>Early Childhood: Prekindergarten-Grade 3</u>	<u>292 Early Childhood: PK-3 TExES and 293 Science of Teaching Reading TExES</u>	<u>160 PPR EC-12 TExES or 2014 edTPA: Early Childhood Education (pilot exam)</u>
Educational Diagnostician			
§239.84	Educational Diagnostician: Early Childhood-Grade 12	153 Educational Diagnostician EC-12 TExES (last operational date 12/31/2020) Starting 1/1/2021 251 Educational Diagnostician EC-12 TExES	Not Applicable: Not an Initial Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
English Language Arts and Reading			
§233.3	English Language Arts and Reading: Grades 4-8	117 English Language Arts and Reading 4-8 TExES (<u>last operational date 12/31/2021</u>) Starting <u>1/1/2022</u> 217 English Language Arts and Reading 4-8 TExES and 293 Science of Teaching Reading TExES (<u>starting 1/1/2021</u>)	160 PPR EC-12 TExES or 2018 edTPA: Middle Childhood English-Language Arts (pilot exam)
§233.3	English Language Arts and Reading: Grades 7-12	231 English Language Arts and Reading 7-12 TExES	160 PPR EC-12 TExES or 2003 edTPA: Secondary English-Language Arts (pilot exam)
§233.3	English Language Arts and Reading/Social Studies: Grades 4-8	113 English Language Arts and Reading/ Social Studies 4-8 TExES and 293 Science of Teaching Reading TExES (<u>starting 1/1/2021</u>)	160 PPR EC-12 TExES or 2018 edTPA: Middle Childhood English-Language Arts (pilot exam) or 2019 edTPA: Middle Childhood History/Social Studies (pilot exam)
§239.93	Reading Specialist: Early Childhood-Grade 12	151 Reading Specialist EC-12 TExES	Not Applicable: Not an Initial Certificate
English as a Second Language			
§233.7	English as a Second Language Supplemental	154 English as a Second Language Supplemental TExES	Not Applicable: Not a Stand-alone Certificate
Gifted and Talented			
§233.9	Gifted and Talented Supplemental	162 Gifted and Talented TExES	Not Applicable: Not a Stand-alone Certificate
Health			
§233.11	Health: Early Childhood-Grade 12	157 Health Education EC-12 TExES	160 PPR EC-12 TExES or 2119 edTPA: Health Education (pilot exam)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Journalism			
§233.3	Journalism: Grades 7-12	256 Journalism 7-12 TExES	160 PPR EC-12 TExES or 2003 edTPA: Secondary English-Language Arts (pilot exam)
Junior Reserve Officer Training			
§233.17	Junior Reserve Officer Training Corps: Grades 6-12	Not Applicable	160 PPR EC-12 TExES
Languages Other Than English			
§233.15	American Sign Language: Early Childhood-Grade 12	184 ASL EC-12 TExES and 073 TASC-ASL	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Arabic: Early Childhood-Grade 12	ACTFL 605 OPI – Arabic and 600 WPT – Arabic	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Chinese: Early Childhood-Grade 12	ACTFL 606 OPI – Chinese (Mandarin) and 601 WPT – Chinese (Mandarin)	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	French: Early Childhood-Grade 12	610 Languages Other Than English (LOTE) French EC-12 TExES	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	German: Early Childhood-Grade 12	611 LOTE German EC-12 TExES	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Hindi: Early Childhood-Grade 12	ACTFL 622 OPI – Hindi and 623 WPT – Hindi	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Italian: Early Childhood-Grade 12	ACTFL 624 OPI – Italian and 625 WPT – Italian	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Japanese: Early Childhood-Grade 12	ACTFL 607 OPI – Japanese and 602 WPT – Japanese	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Korean: Early Childhood-Grade 12	ACTFL 630 OPI – Korean and 631 WPT – Korean	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Languages Other Than English (continued)			
§233.15	Latin: Early Childhood-Grade 12	612 LOTE Latin EC-12 TExES	160 PPR EC-12 TExES or 2104 edTPA: Classical Languages (pilot exam)
§233.15	Portuguese: Early Childhood-Grade 12	ACTFL 632 OPI – Portuguese and 633 WPT – Portuguese	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Russian: Early Childhood-Grade 12	ACTFL 608 OPI – Russian and 603 WPT – Russian	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Spanish: Early Childhood-Grade 12	613 LOTE Spanish EC-12 TExES	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Turkish: Early Childhood-Grade 12	ACTFL 626 OPI – Turkish and 627 WPT – Turkish	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
§233.15	Vietnamese: Early Childhood-Grade 12	ACTFL 609 OPI – Vietnamese and 604 WPT – Vietnamese	160 PPR EC-12 TExES or 2020 edTPA: World Language (pilot exam)
Librarian			
§239.60	School Librarian: Early Childhood-Grade 12	150 School Librarian Early Childhood-12 TExES	Not Applicable: Not an Initial Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
[Master Teacher]			
§239.102	Master Mathematics Teacher: Early Childhood-Grade 4	087 Master Mathematics Teacher EC 4 Texas Examinations for Master Teachers (TExMaT)	Not Applicable: Not an Initial Certificate]
§239.102	Master Mathematics Teacher: Grades 4-8	088 Master Mathematics Teacher 4-8 TExMaT	Not Applicable: Not an Initial Certificate]
§239.102	Master Mathematics Teacher: Grades 8-12	089 Master Mathematics Teacher 8-12 TExMaT	Not Applicable: Not an Initial Certificate]
§239.101	Master Reading Teacher: Early Childhood-Grade 12	085 Master Reading Teacher EC 12 TExMaT	Not Applicable: Not an Initial Certificate]
§239.103	Master Technology Teacher: Early Childhood-Grade 12	086 Master Technology Teacher EC 12 TExMaT	Not Applicable: Not an Initial Certificate]
§239.104	Master Science Teacher: Early Childhood-Grade 4	090 Master Science Teacher EC 4 TExMaT	Not Applicable: Not an Initial Certificate]
§239.104	Master Science Teacher: Grades 4-8	091 Master Science Teacher 4-8 TExMaT	Not Applicable: Not an Initial Certificate]
§239.104	Master Science Teacher: Grades 8-12	092 Master Science Teacher 8-12 TExMaT	Not Applicable: Not an Initial Certificate]

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Mathematics and Science			
§233.4	Mathematics: Grades 4-8	115 Mathematics 4-8 TExES	160 PPR EC-12 TExES or 2016 edTPA: Middle Childhood Mathematics (pilot exam)
§233.4	Science: Grades 4-8	116 Science 4-8 TExES	160 PPR EC-12 TExES or 2017 edTPA: Middle Childhood Science (pilot exam)
§233.4	Mathematics/Science: Grades 4-8	114 Mathematics/ Science 4-8 TExES	160 PPR EC-12 TExES or 2016 edTPA: Middle Childhood Mathematics (pilot exam) or 2017 edTPA: Middle Childhood Science (pilot exam)
§233.4	Mathematics: Grades 7-12	235 Mathematics 7-12 TExES	160 PPR EC-12 TExES or 2005 edTPA: Secondary Mathematics (pilot exam)
§233.4	Science: Grades 7-12	236 Science 7-12 TExES	160 PPR EC-12 TExES or 2006 edTPA: Secondary Science (pilot exam)
§233.4	Life Science: Grades 7-12	238 Life Science 7-12 TExES	160 PPR EC-12 TExES or 2006 edTPA: Secondary Science (pilot exam)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Mathematics and Science (continued)			
§233.4	Physical Science: Grades 6-12	237 Physical Science 6-12 TExES	160 PPR EC-12 TExES or 2006 edTPA: Secondary Science (pilot exam)
§233.4	Physics/Mathematics: Grades 7-12	243 Physics/Mathematics 7-12 TExES	160 PPR EC-12 TExES or 2005 edTPA: Secondary Mathematics (pilot exam) or 2006 edTPA: Secondary Science (pilot exam)
§233.4	Mathematics/Physical Science/Engineering: Grades 6-12	274 Mathematics/Physical Science/Engineering 6-12 TExES	160 PPR EC-12 TExES or 2005 edTPA: Secondary Mathematics (pilot exam) or 2006 edTPA: Secondary Science (pilot exam) or 2143 edTPA: Technology and Engineering Education (pilot exam)
§233.4	Chemistry: Grades 7-12	240 Chemistry 7-12 TExES	160 PPR EC-12 TExES or 2006 edTPA: Secondary Science (pilot exam)
Music			
§233.10	Music: Early Childhood-Grade 12	177 Music EC-12 TExES	160 PPR EC-12 TExES or 2021 edTPA: K-12 Performing Arts (pilot exam)
Physical Education			
§233.12	Physical Education: Early Childhood-Grade 12	158 Physical Education EC-12 TExES (<u>last operational date 8/31/2021</u>) <u>Starting 9/1/2021 258 Physical Education EC-12 TExES</u>	160 PPR EC-12 TExES or 2011 edTPA: Physical Education (pilot exam)

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Principal and Superintendent			
§241.20	Principal as Instructional Leader: Early Childhood-Grade 12	268 Principal as Instructional Leader TExES	Educational Testing Service (ETS) 368 Performance Assessment for School Leaders (PASL)
§241.35	Principal as Instructional Leader Endorsement	Not Applicable: Not an Initial Certificate (Individuals must already hold a valid certificate to serve in the role of principal to be eligible for this endorsement.)	Educational Testing Service (ETS) 368 Performance Assessment for School Leaders (PASL)
§241.60	Principal: Early Childhood-Grade 12	068 Principal TExES	Not Applicable: Not an Initial Certificate.]
§242.20	Superintendent: Early Childhood-Grade 12	195 Superintendent TExES	Not Applicable: Not an Initial Certificate
Social Studies			
§233.3	Social Studies: Grades 4-8	118 Social Studies 4-8 TExES	160 PPR EC-12 TExES or 2019 edTPA: Middle Childhood History/Social Studies (pilot exam)
§233.3	Social Studies: Grades 7-12	232 Social Studies 7-12 TExES	160 PPR EC-12 TExES or 2004 edTPA: Secondary History/Social Studies (pilot exam)
§233.3	History: Grades 7-12	233 History 7-12 TExES	160 PPR EC-12 TExES or 2004 edTPA: Secondary History/Social Studies (pilot exam)
Speech Communications			
§233.3	Speech: Grades 7-12	129 Speech 7-12 TExES	160 PPR EC-12 TExES or 2003 edTPA: Secondary English-Language Arts (pilot exam)
Special Education			
§233.8	Special Education: Early Childhood-Grade 12	161 Special Education EC-12 TExES	160 PPR EC-12 TExES or 2012 edTPA: Special Education (pilot exam)
§233.8	Special Education Supplemental	163 Special Education Supplemental TExES	Not Applicable: Not a Stand-alone Certificate

Certificate TAC Reference	Certificate Name	Required Content Pedagogy Test(s)	Pedagogical Requirement(s)
Special Education (continued)			
§233.8	Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12	181 Deaf and Hard of Hearing EC-12 TExES and 072 TASC or 073 TASC-ASL (required for assignment but not for certification)	160 PPR EC-12 TExES or 2012 edTPA: Special Education (pilot exam)
§233.8	Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12	182 Visually Impaired TExES and 183 Braille TExES or 283 Braille TExES	Not Applicable: Not a Stand-alone Certificate
Theatre			
§233.10	Theatre: Early Childhood-Grade 12	180 Theatre EC-12 TExES	160 PPR EC-12 TExES or 2021 edTPA: K-12 Performing Arts (pilot exam)



The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Draft Annual Action Plan Available for Public Comment

The Texas State Affordable Housing Corporation presents for public comment its Draft 2020 Annual Action Plan, which is a component of the 2020 State Low Income Housing Plan. A copy of the Draft 2020 Annual Action Plan may be found on the Corporation's website at www.tsahc.org.

The public comment period for the Corporation's Draft 2020 Annual Action Plan is December 19, 2019, through January 20, 2020.

Written comment may be sent to Michael Wilt, 2200 E. Martin Luther King Jr. Boulevard, Austin, Texas 78702, or by email to mwilt@tsahc.org.

TRD-201904897

David Long
President

Texas State Affordable Housing Corporation
Filed: December 18, 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 12/23/19 - 12/29/19 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 12/23/19 - 12/29/19 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-201904853

Leslie L. Pettijohn
Commissioner

Office of Consumer Credit Commissioner
Filed: December 17, 2019



Credit Union Department

Application for a Merger or Consolidation

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 MemberSource Credit Union (Houston) seeking approval to merge with National Oilwell Varco Employees Credit Union (Houston), with MemberSource Credit Union being the surviving 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. 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-201904881

John J. Kolhoff
Commissioner
Credit Union Department
Filed: December 18, 2019



Application to Expand Field of Membership

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 Texell Credit Union, Temple, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in Falls, Milam, Lampasas, and Burnet Counties, Texas, 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-201904880

John J. Kolhoff
Commissioner
Credit Union Department
Filed: December 18, 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

Texell Credit Union, Temple, Texas - See *Texas Register* issue dated September 27, 2019 (44 TexReg 5653).

Memorial Credit Union, Houston, Texas - See *Texas Register* issue dated September 27, 2019 (44 TexReg 5653).

Merger or Consolidation - Approved

THD 6 Credit Union (Odessa) and TxDOT Credit Union (Abilene) - See *Texas Register* issue dated March 29, 2019 (44 TexReg 1593).

TRD-201904879

John J. Kolhoff

Commissioner

Credit Union Department

Filed: December 18, 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 **February 4, 2020**. 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 **February 4, 2020**. 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: American First National Bank; DOCKET NUMBER: 2019-1469-PST-E; IDENTIFIER: RN101780427; LOCATION: Center, Shelby County; TYPE OF FACILITY: temporarily out-of-service underground storage tank; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and (4)(C) and TWC, §26.3475(d), by failing to inspect the impressed current corrosion protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly and failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$3,937; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Archer-Daniels-Midland Company; DOCKET NUMBER: 2019-1070-AIR-E; IDENTIFIER: RN100221159; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: cotton oil mill; RULES VIOLATED: 30 TAC §§101.20(2), 113.100, 113.1130, 116.115(c), 122.143(4), and 122.145(1)(C), 40 Code of Federal Regulations §63.12(c) and §63.7550(b)(2), New Source Review Permit Number 20315, Special Conditions Number 3.C, Federal Operating Permit (FOP) Number O1123, General Terms and Conditions (GTC) and Special Terms and Conditions Number 5, and Texas Health and Safety Code (THSC), §382.085(b), by failing to postmark or submit the annual compliance report no later than January 31st; and 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O1123, GTC, and THSC, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance and failing to submit the deviation report no later than 30 days after the end of each reporting period; PENALTY: \$20,625; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(3) COMPANY: Buckeye Texas Processing LLC; DOCKET NUMBER: 2019-1363-AIR-E; IDENTIFIER: RN106620438; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3869, General Terms and Conditions and Special Terms and Conditions Number 16, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$4,425; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Caverns of Sonora, Incorporated; DOCKET NUMBER: 2019-1301-PWS-E; IDENTIFIER: RN101266443; LOCATION: Sonora, Sutton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) and receive an approval prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (ii)(III), and (B)(iii), by failing to properly maintain water works operation and maintenance records and make them available for review to the ED upon request; and 30 TAC §290.110(e)(4)(B), by failing to retain the Disinfectant Level Quarterly Operating Reports and provide a copy if requested by the ED; PENALTY: \$150; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(5) COMPANY: Chris Harp Construction Limited Liability Company; DOCKET NUMBER: 2019-1155-AIR-E; IDENTIFIER: RN109829796; LOCATION: Sunnyvale, Dallas County; TYPE OF FACILITY: portable concrete batch plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a source of air contaminants; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Chris Harp Construction Limited Liability Company; DOCKET NUMBER: 2019-1175-AIR-E; IDENTIFIER: RN109133710; LOCATIONS: Wilmer, Dallas County; Van Alstyne, Grayson County; and Sachse, Dallas County; TYPE OF FACILITY: portable concrete batch plant; RULES VIOLATED: 30 TAC §116.110(a), Standard Permit Registration Number 139362L001, and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by

failing to obtain authorization prior to operating a source of air contaminants; PENALTY: \$4,779; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Beverly Hills; DOCKET NUMBER: 2019-1152-WQ-E; IDENTIFIER: RN105908644; LOCATION: Beverly Hills, McLennan County; TYPE OF FACILITY: small municipal separate storm sewer system (MS4); RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System General Permit for small MS4 activities; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: City of Blum; DOCKET NUMBER: 2019-0708-MWD-E; IDENTIFIER: RN101721520; LOCATION: Blum, Hill County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.65 and §305.125(2) and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$4,575; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: City of Hurst; DOCKET NUMBER: 2019-1117-WQ-E; IDENTIFIER: RN102944410; LOCATION: Hurst, Tarrant County; TYPE OF FACILITY: sanitary sewer collection system with an associated manhole; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Kerrville; DOCKET NUMBER: 2019-0773-MWD-E; IDENTIFIER: RN100844802; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5) and TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010576001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$6,375; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: City of Liberty Hill; DOCKET NUMBER: 2018-1024-MLM-E; IDENTIFIER: RN104102132; LOCATION: Liberty Hill, Williamson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §217.3(b)(2) and §217.325(c) and (k), by failing to ensure the safety of all individuals authorized to access a wastewater treatment facility, treatment unit, collection system, or collection unit; 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(b)(14)(ix) and (c), by failing to obtain authorization to discharge stormwater; 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014477001, Other Requirements Number 9, by failing to notify the TCEQ Austin Regional Office and the TCEQ Applications Review and Processing Team in writing at least 45 days prior to the completion of the new Interim II facilities; 30 TAC §305.125(1) and (4) and §307.4(b)(4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0014477001, Permit Conditions Number 2.d and Operational Requirements Number 1, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting

human health or the environment; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0014477001, Permit Conditions Number 2.g and Operational Requirements Number 1, by failing to prevent an unauthorized discharge and failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §305.125(1) and §319.9(a) and TPDES Permit Number WQ0014477001, Interim II Effluent Limitations and Monitoring Requirements Number 1 and Definitions and Standard Permit Conditions Number 3.a, by failing to properly collect effluent samples; PENALTY: \$114,563; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$91,651; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(12) COMPANY: City of Mart; DOCKET NUMBER: 2019-1027-PWS-E; IDENTIFIER: RN101388544; LOCATION: Mart, McLennan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter (mg/L) of chloramine (measured as total chlorine) throughout the distribution system at all times; 30 TAC §290.46(e)(6)(B) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of at least two operators, with one operator who holds a Class B or higher surface water license and a second operator who holds a Class C or higher surface water license, and who each work at least 32 hours per month at the public water system's production, treatment, and distribution facilities; 30 TAC §290.46(f)(2) and (3)(A)(iv) and (B)(iii), and (D)(i), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; and 30 TAC §290.46(q)(1) and (5), by failing to issue a boil water notification to customers of the facility within 24 hours of a low disinfectant residual using the prescribed format as specified in 30 TAC §290.47(c); PENALTY: \$315; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: DCP Operating Company, LP; DOCKET NUMBER: 2019-1007-AIR-E; IDENTIFIER: RN100209907; LOCATION: Midland, Midland County; TYPE OF FACILITY: natural gas plant processing plant; RULES VIOLATED: 30 TAC §101.201(b) and §122.143(4), Federal Operating Permit (FOP) Number O3378, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to create a final record for a non-reportable emissions event no later than two weeks after the end of an emissions event; and 30 TAC §116.110(a) and §122.143(4), FOP Number O3378, GTC, and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$21,150; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(14) COMPANY: EGERT DIRT WORKS LLC; DOCKET NUMBER: 2019-0933-WQ-E; IDENTIFIER: RN109909770; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(15) COMPANY: Howard Pierce & Sons Stone CO., LLC; DOCKET NUMBER: 2019-1120-WQ-E; IDENTIFIER: RN105916548; LOCATION: San Saba, San Saba County; TYPE OF FACILITY: aggregate

production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Jong Song dba Beltway Grill Shell; DOCKET NUMBER: 2019-1407-PST-E; IDENTIFIER: RN101434512; LOCATION: Missouri City, Harris 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 a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Lamar Consolidated Independent School District; DOCKET NUMBER: 2019-1325-MWD-E; IDENTIFIER: RN102095718; LOCATION: Richmond, Fort Bend County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.65 and TWC, §26.121(a)(1), by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: \$4,125; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Lhoist North America of Texas, Ltd.; DOCKET NUMBER: 2019-1221-AIR-E; IDENTIFIER: RN100552454; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: lime manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review (NSR) Permit Numbers 7808 and PSDTX256M3, Special Conditions (SC) Numbers 1 and 3, Federal Operating Permit (FOP) Number O1122, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 9, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate and emissions limit; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 7808 and PSDTX256M3, SC Number 26, FOP Number O1122, GTC and STC Number 9, and THSC, §382.085(b), by failing to provide notification as soon as possible after the discovery of any monitor malfunction which is expected to result in more than 24 hours of lost data; PENALTY: \$9,789; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: Lifoam Industries, LLC; DOCKET NUMBER: 2019-0931-AIR-E; IDENTIFIER: RN100683440; LOCATION: Waxahachie, Ellis County; TYPE OF FACILITY: expanded polystyrene products manufacturing facility; RULES VIOLATED: 30 TAC §101.10(b)(2) and (e) and Texas Health and Safety Code, §382.085(b), by failing to submit an annual emissions inventory update for the previous calendar year by March 31st of each year or as directed by the commission; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Louisiana-Pacific Corporation; DOCKET NUMBER: 2019-1188-AIR-E; IDENTIFIER: RN100215169; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: wood mill; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 22377 and PSDTX832M5, Special Conditions Number 6, Federal Operating Permit Number O1198, General Terms and Conditions and Special Terms and Conditions Number 10, and Texas Health and Safety Code, §382.085(b), by failing to prevent an excessive opacity event; PENALTY: \$3,563; ENFORCE-

MENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(21) COMPANY: MITIENDA INCORPORATED dba Rundberg Grocery; DOCKET NUMBER: 2019-1130-PST-E; IDENTIFIER: RN101638534; LOCATION: Austin, Travis 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 in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(22) COMPANY: MRD Real Estate Investments, LLC; DOCKET NUMBER: 2019-1149-PWS-E; IDENTIFIER: RN102646601; LOCATION: Baytown, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(E)(ii) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum pressure tank capacity of 50 gallons per connection; and 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (B)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; PENALTY: \$155; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: Nalco Company LLC; DOCKET NUMBER: 2019-0942-AIR-E; IDENTIFIER: RN101618882; LOCATION: Fresno, Fort Bend County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(b)(2)(E)(i) and (c), and 122.143(4), 40 Code of Federal Regulations §60.18(c)(2), New Source Review Permit Number 4005, Special Conditions Number 4.B, Federal Operating Permit (FOP) Number O3536, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A and 11, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records containing the information and data sufficient to demonstrate compliance with the permit; and 30 TAC §122.143(4), FOP Number O3536, GTC and STC Number 11, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,545; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: Nerro Supply, LLC dba Nerro Supply Investors, LLC; DOCKET NUMBER: 2019-1206-PWS-E; IDENTIFIER: RN101241255; LOCATION: Beach City, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(7), by failing to have all air release devices installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants; 30 TAC §290.42(f)(1)(E)(ii)(I), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute per connection and failing to provide a total storage capacity of 83 gallons per connection as required by the alternative capacity requirement approved by the executive director (ED); 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(f)(2) and (3)(A)(iii), (B)(iv), and (D)(ii), by failing to maintain water works operation and maintenance

records and make them readily available for review by the ED upon request; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; and 30 TAC §290.46(u), by failing to plug an abandoned public water supply well with cement in accordance with 16 TAC, Chapter 76 or submit test results proving that the well is in a non-deteriorated condition; PENALTY: \$2,352; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(25) COMPANY: OCI Beaumont LLC; DOCKET NUMBER: 2019-0225-AIR-E; IDENTIFIER: RN102559291; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review (NSR) Permit Numbers 901 and PSDTX1334, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1645, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 16, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 901 and PSDTX1334, SC Number 1, FOP Number O1645, GTC and STC Number 16, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §§101.20(3), 116.615(c), and 122.143(4), NSR Permit Numbers 901 and PSDTX1334, SC Number 8, FOP Number O1645, GTC and STC Number 16, and THSC, §382.085(b), by failing to comply with the emissions limit and concentration limits; 30 TAC §101.201(c) and §122.143(4), FOP Number O1645, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1645, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$70,161; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$28,064; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(26) COMPANY: OILTON RURAL WATER SUPPLY CORPORATION THE STATE OF TEXAS; DOCKET NUMBER: 2019-1227-PWS-E; IDENTIFIER: RN101195683; LOCATION: Oilton, Webb County; TYPE OF FACILITY: public water supply (PWS); RULES VIOLATED: 30 TAC §290.41(c)(3)(A) and TCEQ Agreed Order Docket Number 2017-1300-PWS-E, Ordering Provision Numbers 2.c and 2.e, by failing to submit well completion data and obtain approval by the executive director (ED) prior to placing Well Numbers G2400006F and G2400006G into service as PWS sources; 30 TAC §290.41(c)(3)(N) and TCEQ Agreed Order Docket Number 2017-1300-PWS-E, Ordering Provision Number 2.a.i, by failing to provide an operational flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.46(f)(2) and (3)(A)(ii)(III) and (V), and (iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED upon request; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's two ground storage tanks and one elevated storage tank annually; and 30 TAC §290.46(s)(1) and TCEQ Agreed Order Docket Number 2017-1300-PWS-E, Ordering Provision Number 2.a.ii, by failing to calibrate the facility's well meters at least once every three years; PENALTY: \$987; ENFORCEMENT COORDINATOR: Danielle

Porras, (713) 767-3682; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(27) COMPANY: REXCO, INCORPORATED; DOCKET NUMBER: 2019-1218-WQ-E; IDENTIFIER: RN109842682; LOCATION: Cuero, Dewitt County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(28) COMPANY: Shumaker Enterprises, Incorporated; DOCKET NUMBER: 2019-1244-PWS-E; IDENTIFIER: RN109117218; LOCATION: Austin, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.010 milligrams per liter for arsenic based on a running annual average; and 30 TAC §290.122(b)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the MCL for arsenic based on the running annual average for the first quarter of 2019; PENALTY: \$229; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(29) COMPANY: Weatherford Aerospace, LLC; DOCKET NUMBER: 2019-0564-AIR-E; IDENTIFIER: RN100218734; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: an aerospace manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B) and (C), Federal Operating Permit Number O1470, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance and failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: \$5,437; ENFORCEMENT COORDINATOR: Soraya Bun, (713) 422-8912; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: Weir Brothers Contracting, LLC; DOCKET NUMBER: 2019-1171-WQ-E; IDENTIFIER: RN109791616; LOCATION: Hutchins, Dallas County; TYPE OF FACILITY: commercial construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; PENALTY: \$18,750; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(31) COMPANY: WESTROAD BUSINESS, INCORPORATED dba Kroozin Market; DOCKET NUMBER: 2019-0712-PST-E; IDENTIFIER: RN109195222; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(iii), by failing to have a valid, current TCEQ delivery certificate posted at the facility; 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §334.50(b)(1)(B) and TWC, §26.3475(c)(1), by failing to monitor the UST in a manner which will detect a release at a frequency of at least once every 30 days by using interstitial monitoring for all USTs installed on or after January 1, 2009; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C operator for the facility; PENALTY: \$14,439;

ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111;
REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas
77023-1452, (713) 767-3500.

TRD-201904861

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 17, 2019



Amended Notice of Application and Public Hearing for an
Air Quality Standard Permit for a Concrete Batch Plant
With Enhanced Controls: Proposed Air Quality Registration
Number 159167

APPLICATION. Titan Ready Mix, LP, 1050 Hughie Long Road, Cresson, Texas 76035-4174 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 159167 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at the following driving directions: from the intersection of Cantrell Court and Hughie Long Road, go east on Hughie Long Road for 0.12 mile, site entrance will be on the right, Cresson, Hood County, Texas 76035. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. 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=32.535833&lng=-97.638611&zoom=13&type=r>. This application was submitted to the TCEQ on November 14, 2019. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on November 26, 2019.

PUBLIC COMMENT/PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Tuesday, January 21, 2020 at 6:00 p.m.

Scottish Inns

9120 East Highway 377

Cresson, Texas 76035

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and basing this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Dr, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Titan Ready Mix, LP, 1050 Hughie Long Road, Cresson, Texas 76035-4174, or by calling Mr. Josh Butler, Principal Consultant, Elm Creek Environmental, LLC at (972) 768-9093.

Notice Issuance Date: December 16, 2019

TRD-201904874

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 18, 2019



Enforcement Orders

An agreed order was adopted regarding NEW ARROWHEAD LLC dba Quick Stop, Docket No. 2018-0102-PST-E on December 17, 2019, assessing \$2,932 in administrative penalties with \$586 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Salim Hussain dba Minute Stop 1, Docket No. 2018-0837-PST-E on December 17, 2019, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 2931 Materials, LLC, Docket No. 2018-1153-AIR-E on December 17, 2019, assessing \$3,162 in administrative penalties with \$632 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding THE DAYA ENTERPRISE, INC. dba Regal Food Mart, Docket No. 2018-1160-PST-E on December 17, 2019, assessing \$6,792 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Logan Harrell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Mart, Docket No. 2018-1296-PWS-E on December 17, 2019, assessing \$4,570 in administrative penalties with \$914 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Cynthia Anne Young dba Whispering Oaks Water Coop, Docket No. 2018-1301-MLM-E on December 17, 2019, assessing \$4,274 in administrative penalties with \$854 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Patterson Wood Products, Inc., Docket No. 2018-1363-AIR-E on December 17, 2019, assessing \$7,388 in administrative penalties with \$1,477 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Joey Scheffler, Docket No. 2018-1423-OSI-E on December 17, 2019, assessing \$250 in administrative penalties with \$50 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 16 Sand, LLC, Docket No. 2018-1450-MLM-E on December 17, 2019, assessing \$1,840 in administrative penalties with \$368 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HFOTCO LLC, Docket No. 2018-1455-AIR-E on December 17, 2019, assessing \$5,909 in administrative penalties with \$1,181 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TEXAS TRANSEASTERN, INC., Docket No. 2018-1617-PST-E on December 17, 2019, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CenturyLink Communications, LLC dba Qwest Communications, Docket No. 2018-1627-PST-E on December 17, 2019, assessing \$6,185 in administrative penalties with \$1,237 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BUCHANAN LAKE VILLAGE, INC., Docket No. 2018-1655-PWS-E on December 17, 2019,

assessing \$90 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Mercurief II, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lincoln Water Supply Corporation, Docket No. 2018-1701-PWS-E on December 17, 2019, assessing \$360 in administrative penalties with \$72 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sprovy 7 Applegate TX 1, LLC, Docket No. 2018-1710-EAQ-E on December 17, 2019, assessing \$4,875 in administrative penalties with \$975 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ONE 11 INVESTMENT, LLC dba Yellowstone Mart, Docket No. 2018-1725-PST-E on December 17, 2019, assessing \$3,605 in administrative penalties with \$721 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of George West, Docket No. 2018-1733-PWS-E on December 17, 2019, assessing \$3,099 in administrative penalties with \$619 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Annona, Docket No. 2019-0077-PWS-E on December 17, 2019, assessing \$365 in administrative penalties with \$73 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AARM BUSINESS INC dba Time Rise 1, Docket No. 2019-0089-PST-E on December 17, 2019, assessing \$3,493 in administrative penalties with \$698 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KLEMME ENTERPRISES, INC. dba Lomaland Food Mart, Docket No. 2019-0092-PST-E on December 17, 2019, assessing \$7,044 in administrative penalties with \$1,408 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding INEOS Styrolution America LLC, Docket No. 2019-0113-AIR-E on December 17, 2019, assessing \$3,801 in administrative penalties with \$760 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Daniel James Hernandez and Christine Sue Hernandez as Trustees of the Hernandez Revocable Liv-

ing Trust, Docket No. 2019-0169-EAQ-E on December 17, 2019, assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WestRock Texas, L.P., Docket No. 2019-0191-AIR-E on December 17, 2019, assessing \$4,841 in administrative penalties with \$968 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NORRELL CONSTRUCTION, INC., Docket No. 2019-0231-PST-E on December 17, 2019, assessing \$6,769 in administrative penalties with \$1,353 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SI Group, Inc., Docket No. 2019-0237-AIR-E on December 17, 2019, assessing \$4,612 in administrative penalties with \$922 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FJ TRADE INC dba PMI 1, Docket No. 2019-0277-PST-E on December 17, 2019, assessing \$5,276 in administrative penalties with \$1,055 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Trend Gathering & Treating, LLC, Docket No. 2019-0316-AIR-E on December 17, 2019, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mission Vacuum & Pump Truck Service, Inc., Docket No. 2019-0317-WQ-E on December 17, 2019, assessing \$2,625 in administrative penalties with \$525 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Lingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Petro-Chemical Transport, LLC, Docket No. 2019-0379-PST-E on December 17, 2019, assessing \$4,520 in administrative penalties with \$904 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GLK & Rozy LLC dba K and K Food Mart 3, Docket No. 2019-0388-PST-E on December 17, 2019, assessing \$5,250 in administrative penalties with \$1,050 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Southside Independent School District, Docket No. 2019-0396-PST-E on December 17, 2019, assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pejoma, LLC dba 281 Korner Store, Docket No. 2019-0446-PST-E on December 17, 2019, assessing \$3,787 in administrative penalties with \$757 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MarkWest Energy East Texas Gas Company, L.L.C., Docket No. 2019-0469-AIR-E on December 17, 2019, assessing \$2,963 in administrative penalties with \$592 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PINEY WOODS HEALTH-CARE SYSTEM, L.P., Docket No. 2019-0489-PST-E on December 17, 2019, assessing \$7,500 in administrative penalties with \$1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WEST MAIN PLAZA LLC dba On Point, Docket No. 2019-0523-PST-E on December 17, 2019, assessing \$5,954 in administrative penalties with \$1,190 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dos Republicas Coal Partnership, Docket No. 2019-0637-AIR-E on December 17, 2019, assessing \$2,125 in administrative penalties with \$425 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Edward A. Hetzel dba Decent Store, Docket No. 2019-0640-PWS-E on December 17, 2019, assessing \$660 in administrative penalties with \$132 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DeCoty Coffee Company, Docket No. 2019-0652-WQ-E on December 17, 2019, assessing \$1,626 in administrative penalties with \$325 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Quick Stripe Paving, Inc., Docket No. 2019-0659-AIR-E on December 17, 2019, assessing \$1,250 in administrative penalties with \$250 deferred. Information concerning any aspect of this order may be obtained by contacting

Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PSST LLC dba Best Twin Oak Country Store, Docket No. 2019-0672-PST-E on December 17, 2019, assessing \$2,880 in administrative penalties with \$576 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Millersview-Doole Water Supply Corporation, Docket No. 2019-0707-PWS-E on December 17, 2019, assessing \$555 in administrative penalties with \$111 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HERITAGE MARKET LLC dba Route 69 Country Store, Docket No. 2019-0721-PST-E on December 17, 2019, assessing \$1,876 in administrative penalties with \$375 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding David Knight dba DK Recycling, Docket No. 2019-0743-WQ-E on December 17, 2019, assessing \$1,312 in administrative penalties with \$262 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding US Department of the Navy, Docket No. 2019-0746-PWS-E on December 17, 2019, assessing \$200 in administrative penalties with \$40 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Friedman Recycling of El Paso, LP, Docket No. 2019-0755-MSW-E on December 17, 2019, assessing \$1,500 in administrative penalties with \$300 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding C.M.D.T. LLC, Docket No. 2019-0766-AIR-E on December 17, 2019, assessing \$1,312 in administrative penalties with \$262 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RL Signor Barnhart, LLC, Docket No. 2019-0768-PWS-E on December 17, 2019, assessing \$760 in administrative penalties with \$152 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Howard Bruce Freeman, Docket No. 2019-0771-MSW-E on December 17, 2019, assessing \$1,312 in administrative penalties. Information concerning any aspect

of this order may be obtained by contacting Jaime Garcia, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Trent Water Works, Inc., Docket No. 2019-0816-PWS-E on December 17, 2019, assessing \$314 in administrative penalties with \$62 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ALTO RURAL WATER SUPPLY CORPORATION, Docket No. 2019-0822-PWS-E on December 17, 2019, assessing \$526 in administrative penalties with \$105 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oil Patch Group, Inc., Docket No. 2019-0823-PWS-E on December 17, 2019, assessing \$100 in administrative penalties with \$20 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Country Water, Inc., Docket No. 2019-0845-PWS-E on December 17, 2019, assessing \$100 in administrative penalties with \$20 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kathie Lou Daniels, Docket No. 2019-0863-PWS-E on December 17, 2019, assessing \$637 in administrative penalties with \$127 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Koch-Glitsch, LP, Docket No. 2019-0884-PWS-E on December 17, 2019, assessing \$354 in administrative penalties with \$70 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Happy Hoa Chuong, LLC, Docket No. 2019-0887-PWS-E on December 17, 2019, assessing \$110 in administrative penalties with \$22 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dunn & Stone Builders, LLC, Docket No. 2019-0954-WQ-E on December 17, 2019, assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Janie Hibdon and Steven A. Hibdon dba Hill Country Mobile Home Park, Docket No. 2019-0978-PWS-E on December 17, 2019, assessing \$125 in administrative penalties with \$25 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Brant Brantley dba Skinner's Grocery & Market, Docket No. 2019-0994-PST-E on December 17, 2019, assessing \$2,438 in administrative penalties with \$487 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Noble Classic Homes, Inc., Docket No. 2019-1118-WQ-E on December 17, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding THORNTON, MICHAEL TREY, Docket No. 2019-1213-WQ-E on December 17, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Lofton Properties, LLC, Docket No. 2019-1276-MLM-E on December 17, 2019, assessing \$1,750 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Quality Homes of Abilene LLC, Docket No. 2019-1387-WQ-E on December 17, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Steven Van Lingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Sumeer Homes, Inc., Docket No. 2019-1457-WQ-E on December 17, 2019, assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding MOORE, Donald Ray, Docket No. 2019-1460-OSI-E on December 17, 2019, assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201904875
Bridget C. Bohac
Chief Clerk

Texas Commission on Environmental Quality
Filed: December 18, 2019



Enforcement Orders

A default order was adopted regarding CATALPA WATER SUPPLY CORPORATION, Docket No. 2016-2069-PWS-E on December 18, 2019, assessing \$337 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding John Chau dba Roundup 5, Docket No. 2016-2116-PST-E on December 18, 2019, assessing

\$19,593 in administrative penalties with \$3,918 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding P C S DEVELOPMENT COMPANY, Docket No. 2017-0785-MWD-E on December 18, 2019, assessing \$22,363 in administrative penalties with \$18,763 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AMER & MILAD INVESTMENTS INC dba Bruton Store, Docket No. 2017-1767-PST-E on December 18, 2019, assessing \$15,852 in administrative penalties with \$3,170 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SJ&F LLC dba Shell C.F. Hawn, Docket No. 2018-0080-PST-E on December 18, 2019, assessing \$28,168 in administrative penalties with \$5,633 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SPIDLE & SPIDLE, INC., Docket No. 2018-0481-PST-E on December 18, 2019, assessing \$19,231 in administrative penalties with \$3,846 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Littlefield, Docket No. 2018-0532-MSW-E on December 18, 2019, assessing \$68,775 in administrative penalties with \$13,755 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GRASSLAND WATER SUPPLY CORPORATION, Docket No. 2018-0624-MLM-E on December 18, 2019, assessing \$2,152 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PARTNERS DEWATERING INTERNATIONAL, L.C., Docket No. 2018-0753-MSW-E on December 18, 2019, assessing \$48,168 in administrative penalties with \$9,633 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Marathon Petroleum Company LP and Blanchard Refining Company LLC, Docket No. 2018-0863-AIR-E on December 18, 2019, assessing \$26,252 in administrative penalties with \$5,249 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lion Elastomers LLC, Docket No. 2018-0868-IHW-E on December 18, 2019, assessing \$60,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Johnny T. Arroyos dba Johnny Arroyos RV Park, Docket No. 2018-0878-PWS-E on December 18, 2019, assessing \$905 in administrative penalties with \$456 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NORTH ALAMO WATER SUPPLY CORPORATION, Docket No. 2018-0905-MLM-E on December 18, 2019, assessing \$8,822 in administrative penalties with \$1,764 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Holt Crushing, LLC, Docket No. 2018-0917-AIR-E on December 18, 2019, assessing \$10,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding E & B, LLC dba Swif-T Food Store, Docket No. 2018-1040-PST-E on December 18, 2019, assessing \$7,701 in administrative penalties with \$1,540 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of White Settlement, Docket No. 2018-1047-WQ-E on December 18, 2019, assessing \$5,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Elsa, Docket No. 2018-1103-WQ-E on December 18, 2019, assessing \$11,250 in administrative penalties with \$2,250 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chevron Phillips Chemical Company LP, Docket No. 2018-1152-AIR-E on December 18, 2019, assessing \$60,938 in administrative penalties with \$12,187 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding M-CO AUTO SUPPLY, INC., Docket No. 2018-1257-PST-E on December 18, 2019, assessing \$13,617 in administrative penalties with \$2,723 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pelican Island Storage Terminal, LLC, Docket No. 2018-1335-AIR-E on December 18, 2019, assessing \$8,775 in administrative penalties with \$1,755 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding North Breeze MHC, LLC, Docket No. 2018-1344-PWS-E on December 18, 2019, assessing \$102 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steve Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2018-1380-AIR-E on December 18, 2019, assessing \$26,101 in administrative penalties with \$5,220 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shade Structures, Inc., Docket No. 2018-1383-WQ-E on December 18, 2019, assessing \$7,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RIVER BEND WATER SERVICES, INC., Docket No. 2018-1414-PWS-E on December 18, 2019, assessing \$210 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DEAL DASH C-STORES, INC. dba 24/7 Xpresway, Docket No. 2018-1418-PST-E on December 18, 2019, assessing \$10,125 in administrative penalties with \$2,025 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rio Water Supply Corporation, Docket No. 2018-1432-PWS-E on December 18, 2019, assessing \$8,086 in administrative penalties with \$1,617 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding United States Gypsum Company, Docket No. 2018-1458-AIR-E on December 18, 2019, assessing \$15,842 in administrative penalties with \$3,168 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SI Group, Inc., Docket No. 2018-1474-AIR-E on December 18, 2019, assessing \$13,800 in administrative penalties with \$2,760 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Liberty, Docket No. 2018-1495-MWD-E on December 18, 2019, assessing \$16,200 in

administrative penalties with \$3,240 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Solidwood Forest Ltd., Docket No. 2018-1501-PWS-E on December 18, 2019, assessing \$243 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Weslaco, Docket No. 2018-1522-MWD-E on December 18, 2019, assessing \$14,287 in administrative penalties with \$2,857 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Horseshoe Bay, Docket No. 2018-1529-MWD-E on December 18, 2019, assessing \$7,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Arp, Docket No. 2018-1585-PWS-E on December 18, 2019, assessing \$232 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WORLEY WELDING WORKS, INC., Docket No. 2018-1603-PWS-E on December 18, 2019, assessing \$172 in administrative penalties with \$172 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DAVIS OPERATING COMPANY, Docket No. 2018-1614-AIR-E on December 18, 2019, assessing \$39,249 in administrative penalties with \$7,849 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lion Elastomers LLC, Docket No. 2018-1693-AIR-E on December 18, 2019, assessing \$15,000 in administrative penalties with \$3,000 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2018-1728-PWS-E on December 18, 2019, assessing \$345 in administrative penalties with \$345 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GEVERS INVESTMENT INC dba Stanleys Ice House, Docket No. 2018-1757-PST-E on December 18, 2019, assessing \$10,350 in administrative penalties with \$2,070 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at

(512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hudson Water Supply Corporation, Docket No. 2019-0046-PWS-E on December 18, 2019, assessing \$351 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ETC Field Services LLC, Docket No. 2019-0060-AIR-E on December 18, 2019, assessing \$9,375 in administrative penalties with \$1,875 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Aubrey, Docket No. 2019-0086-MWD-E on December 18, 2019, assessing \$9,375 in administrative penalties with \$1,875 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PREMIER PARKING COMPANY dba Premier Convenience Store, Docket No. 2019-0100-PST-E on December 18, 2019, assessing \$9,124 in administrative penalties with \$1,824 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Meadowhill Regional Municipal Utility District, Docket No. 2019-0144-MWD-E on December 18, 2019, assessing \$32,025 in administrative penalties with \$6,405 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Queen City, Docket No. 2019-0168-MWD-E on December 18, 2019, assessing \$8,750 in administrative penalties with \$1,750 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Corinth, Docket No. 2019-0218-WQ-E on December 18, 2019, assessing \$4,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LAKE BONANZA WATER SUPPLY CORPORATION, Docket No. 2019-0333-PWS-E on December 18, 2019, assessing \$172 in administrative penalties with \$172 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201904892
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 18, 2019

◆ ◆ ◆
Notice of Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40305

Application. Texas Decon LLC, 122 Dennis Drive, Seguin, Texas, 78155, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40305, to construct and operate a Type V municipal solid waste medical waste processing facility. The proposed facility, Texas Decon, will be located 0.2 miles south of the intersection of State Highway 123 and FM 758 on the west side of State Highway 123, 78155, in Guadalupe County. The Applicant is requesting authorization to process, store, and transfer medical waste, trace chemotherapy waste, and non-hazardous pharmaceuticals. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f>. For exact location, refer to application.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Public Comment/Public Meeting. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the registration application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the registration 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 registration application, members of the public may state their formal comments orally into the official record. All formal comments will be considered before a decision is reached on the registration application. The executive director is not required to file a response to comments.

The Public Meeting is to be held:

Tuesday, January 28, 2020 at 7:00 p.m.

Geronimo Community Center

208 Navarro Drive

Seguin, Texas 78155

Information. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the registration application or the registration process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The registration application is available for viewing and copying at the Seguin Public Library, 313 West Nolte Street, Seguin, Texas 78155 and may be viewed online at <https://cook-joyce.com/permits/>. Further information may also be obtained from Texas Decon LLC at the address stated above or by calling David Kirk Flippin at (830) 660-3149.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issued Date: December 16, 2019

TRD-201904876

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 18, 2019

◆ ◆ ◆
Notice of Water Quality Application

The following notice was issued on December 13, 2019.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 *within 30 days of the Texas Register issued date of notice.*

INFORMATION SECTION

POTAC, LLC, which operates the POTAC Facility (Pin Oak Terminal at Corpus), a petroleum refining facility, has applied for a minor amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002720000 to authorize the removal of Outfalls 002 and 003, which will be covered under a new Multi-Sector General Stormwater Permit (TXR050000). The draft permit authorizes the discharge of treated process wastewater, treated stormwater, water softener blowdown, cooling tower blowdown, boiler blowdown, and hydrostatic test water at a daily average flow not to exceed 120,000 gallons per day via Outfall 001 (Interim Phase) and Outfall 006 (Final Phase). The facility is located at 6600 Up River Road, on the north side of Up River Road approximately one-half mile west of the intersection of Up River Road and Valero Way, northwest of the City of Corpus Christi, in Nueces County, Texas 78409. The TCEQ executive director reviewed this action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the General Land Office and has determined that the action is consistent with the applicable CMP goals and policies.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201904877

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 18, 2019

◆ ◆ ◆
Department of State Health Services

Designation of a Practice Serving a Medically Underserved Population

The Texas Department of State Health Services (department) is required under Texas Occupations Code §157.051 to designate practices serving a medically underserved population. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a practice serving a medically underserved population: St. Elizabeth Medical Group HC dba Bay Area House Calls, 1501 North Amburn Road, Suite 9, Texas City, Texas 77591. The designation is based on eligibility as a practice serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Anne Nordhaus, MA, Research Specialist, Health Professions Resource Center - Mail Code 1898, Center for Health Statistics, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; (512) 776-3862 (phone); (512) 776-7344 (fax); or hprc@dshs.texas.gov (email). Comments will be accepted for 30 days from the publication date of this notice.

TRD-201904850

Barbara L. Klein
General Counsel
Department of State Health Services
Filed: December 16, 2019

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Southern Underwriters Insurance Company, a foreign fire and/or casualty company. The home office is in Oklahoma City, Oklahoma.

Application for Everspan Financial Guarantee Corp., a foreign fire and/or casualty company, to change its name to Everspan Insurance Company. The home office is in New York, New York.

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 Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-201904885

James Person
General Counsel
Texas Department of Insurance
Filed: December 18, 2019

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Public Utility Commission of Texas

Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 11, 2019, to adjust the high-cost support it receives from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to its current rates.

Docket Title and Number: Application of Totelcom Communications, LLC to Adjust High Cost Support under 16 Texas Administrative Code §26.407(h), Docket Number 50339.

Totelcom Communications, LLC requests a high-cost support adjustment increase of \$269,597. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the 12 months prior to the filing of the application, as required by 16 Texas Administrative Code §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50339.

TRD-201904896

Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: December 18, 2019

◆ ◆ ◆
Notice of Hearing on Emergency Order

PETITION: Commission Staff's Request for an Emergency Order Appointing a Temporary Manager to Drew T. Spencer dba Cypresswood Estates Water System Without a Hearing.

The Public Utility Commission of Texas (Commission) Staff applied to the Commission for an emergency order appointing a temporary manager to manage the retail water utility services and operations of Drew T. Spencer dba Cypresswood Estates Water System (Cypresswood) located in Montgomery County. Notice of the petition was mailed on December 2, 2019, to the last known address of Cypresswood's headquarters and to the additional addresses listed in Commission Staff's petition.

On December 2, 2019, under authority delegated by the Commission, the Executive Director granted the petition and appointed Harrison Williams as temporary manager of Cypresswood. The appointment was effective December 2, 2019.

The emergency order was issued without a hearing under the authority in §13.4132 and §13.451 of the Texas Water Code (TWC). TWC §13.451 authorizes the Commission to issue an emergency order after providing notice and opportunity for a hearing that the Commission considers practicable under the circumstances or without notice or opportunity for a hearing. If the Commission considers the provision of notice and opportunity for a hearing practicable, the Commission shall provide notice not later than the 10th day before the date set for the hearing.

EMERGENCY ORDER HEARING: In accordance with TWC §13.4132 and §13.451, the Public Utility Commission of Texas will convene a hearing on the Emergency Order at the Commission's offices at 9:30 a.m., January 16, 2020, 1701 N. Congress Avenue, Austin, Texas 78701.

The Commission will consider evidence on whether to affirm, modify, or set aside the emergency order appointing the temporary manager. The hearing will be conducted in accordance with Chapter 2001 of the Texas Government Code, TWC chapter 13, and Commission rules in 16 Texas Administrative Code chapter 24.

Persons planning to attend this hearing who have disabilities requiring auxiliary aids or services should notify the Commission as far in advance as possible so that appropriate arrangements can be made. Requests can be made by mail, telephone or in person to the Commission's Office of Customer Protection, 1701 N. Congress Ave., Austin, Texas

78701, phone number (512) 936-7150 or (512) 936-7136 for the tele-typewriter for the deaf.

TRD-201904859

Theresa Walker

Assistant Rules Coordinator

Public Utility Commission of Texas

Filed: December 17, 2019



Notice of Intent to Implement a Minor Rate Change Under 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on December 13, 2019, to implement a minor rate change under 16 Texas Administrative Code (TAC) §26.171.

Tariff Control Title and Number: Application of Wes-Tex Telephone Cooperative, Inc. for Approval of a Minor Rate Change Under 16 Texas Administrative Code §26.171, Tariff Control Number 50355.

The Application: Wes-Tex Telephone filed an application to increase the basic local access line rates for residential customers from \$19.62 to \$22.25 in the Lomax, Lenorah, West Stanton, Garden City, St. Lawrence, Vincent, Luther, Coahoma, San Springs, Ackerly exchanges and Coahoma, Luther, Ackerly and San Springs exchanges, from \$20.00 to \$21.47 for business customers. Concurrently, Wes-Tex will eliminate the Access Recovery Charge (ARC) of \$1.60 for residential customers, and business customers will continue to pay the \$3.00 business ARC. If approved, the proposed rate changes will take effect on January 1, 2020. The estimated net increase to Wes-Tex's total regulated intrastate gross annual revenues due to the proposed increase is \$48,167.

If the Commission receives a complaint(s) relating to this proposal signed by 5% or more of the local service customers to which this proposal applies by January 10, 2020, the application will be docketed. The 5% threshold is calculated using total number of affected customers as of the calendar month preceding the Commission's receipt of the complaint(s). As of December 31, 2019, the 5% threshold equals approximately 81 customers.

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by January 13, 2020. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 50355.

TRD-201904898

Andrea Gonzalez

Rules Coordinator

Public Utility Commission of Texas

Filed: December 18, 2019



South Plains Association of Governments

Llano Estacado Regional Water Planning Group - Region O Solicitation of Nominations

Regional Water Planning in the State of Texas is the local process which guides conservation and water projects. The Regional Water Plans, upon approval by the Texas Water Development Board (TWDB), are used to help develop the State Water Plan, which guides state funding of water projects.

The South Plains Association of Governments (SPAG) is the designated political subdivision (Administrative Agency) approved by the Llano Estacado Regional Water Planning Group (LERWPG) and encompasses the following counties: Bailey, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Parmer, Swisher, Terry, and Yoakum.

Notice is hereby given that the LERWGP - Region O is soliciting nominations for the following interest category seat whose 5-year term expires effective December 31st, 2019:

Interest Group	Voting Member	Seeking Re-Election
Public	Dr. Melanie Barns	Yes
Agricultural	Delmon Ellison	No
Water Utilities	Doug Hutcheson	No
Agricultural	Jimmy Wedel	Yes
Municipalities (small) less than 10,000	Alan Monroe	Yes
Municipalities (medium) 10-30,000	Tom Simons	No
Municipalities (large) 30,000 or more	Aubrey Spear	Yes
Electric Generating Utilities	Bret Yeary	Yes

Nominees must represent the interest group category for which a member is sought within the Region O planning area, be willing to participate in the regional water planning process, and abide by the Bylaws of the planning group, to qualify for voting membership on the LERWPG. If you would like to submit a nomination for a voting member representative of the interest category listed above, you may do so by emailing your nomination packet to kdavila@spag.org or by sending your nomination packet to the administrative agency listed below:

South Plains Association of Governments

Attention: Kelly Davila

P.O. Box 3730

Lubbock, Texas 79452

A nomination packet for candidates should include a cover letter from the nominee explaining how the nominee is qualified to serve on the LERWPG, a resume, and a minimum of two to a maximum of six letters of support. At least one recommendation letter should be from a member of the LERWPG. **Deadline for submission for all nominations is Monday, January 20, 2020, to be considered.** Consideration of nominations and voting will take place at the next FY2020 regular public meeting of the LERWPG, date to be determined.

If you have any questions, please contact Kelly Davila at (806) 762-8721 or email at kdavila@spag.org.

TRD-201904923

Kelly Davila

Director of Regional Services and Economic Development

South Plains Association of Governments

Filed: December 17, 2019



Notice of Solicitation for Nominations for Persons to Serve on the Llano Estacado Regional Water Planning Group - Region O

Regional Water Planning in the State of Texas is the local process which guides conservation and water projects. The Regional Water Plans, upon approval by the Texas Water Development Board (TWDB), are used to help develop the State Water Plan, which guides state funding of water projects.

The South Plains Association of Governments (SPAG) is the designated political subdivision (Administrative Agency) approved by the Llano Estacado Regional Water Planning Group (LERWPG) and encompasses the following counties: Bailey, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Parmer, Swisher, Terry, and Yoakum.

Notice is hereby given that the LERWPG is soliciting nominations for persons to serve as voting members on the LERWPG representing **Agriculture, Municipalities (medium) 10-30,000, Water Districts, and Water Utilities.** The selected representatives will serve the remainder of a five-year term ending December 31, 2025, and will be eligible to re-apply for the following five-year term.

--**Agriculture**, defined as those persons or entities associated with production or processing of plant or animal products.

--**Municipalities (medium) Pop. 10-30,000**, defined as governments of cities created or organized under the general, home-rule, or special laws of the state.

--**Water Districts**, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59, including districts having the authority to regulate

the spacing of or production from water wells, but not including river authorities.

--**Water Utilities**, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts.

To qualify for voting membership on the LERWPG, nominees must represent the interest group category for which a member is sought within the Region O planning area, be willing to participate in the regional water planning process, and abide by the Bylaws of the LERWPG.

Deadline for submission of nominations is Monday, January 20, 2020. A nomination packet for candidates should include a cover letter from the nominee explaining how the nominee is qualified to serve on the LERWPG, a resume, and a minimum of two to a maximum of six letters of support. At least one support letter should be from a member of the LERWPG. Appointment of a voting member to represent the above mentioned interest may be considered by the LERWPG at a future meeting as determined by the LERWPG.

Nominations may be mailed or emailed. For more information, or to submit nominations, please contact the administrative agency:

South Plains Association of Governments

Attention: Kelly Davila

P.O. Box 3730

Lubbock, Texas 79452

(806) 762-8721

kdavila@spag.org

TRD-201904855

Kelly Davila

Director of Regional Services and Economic Development

South Plains Association of Governments

Filed: December 17, 2019



Texas Department of Transportation

Dallas District Notice Affording an Opportunity for a Public Hearing

District Projects and Programs Affecting Bicycle Use on the State Highway System

In accordance with Texas Administrative Code, Title 43, Part 1, Chapter 25, Subchapter D, §25.55(b), the Texas Department of Transportation (TxDOT) - Dallas District is affording the opportunity for a public hearing on district transportation programs and policies affecting bicycle use on the state highway system.

The purpose of this notice is to allow any person an opportunity to request, in writing, that a public hearing be held to provide information on the bicycle plans, policies, and programs for the TxDOT Dallas District. A mailing list will be developed by the district on this topic, and interested individuals and groups may submit a request to be added to the list.

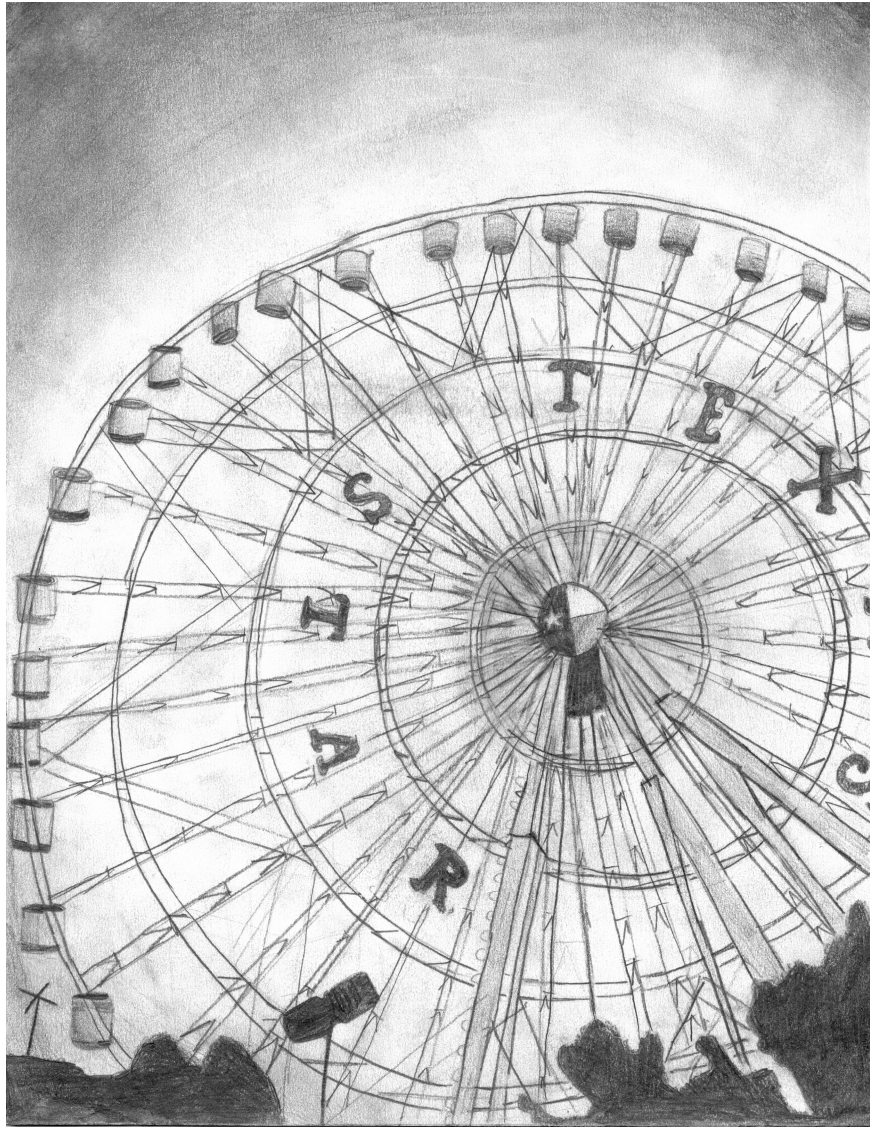
All interested individuals may request a public hearing be held by submitting a written request, by mail, to the **TxDOT Dallas District - Advance Project Development, at 4777 East Highway 80, Mesquite, Texas 75150-6643, Attn: Melissa Meyer.** All written requests must be postmarked on or before **Friday, January 24, 2020**, to be included as a part of the official public hearing request record. For additional in-

formation please contact Ms. Meyer at (214) 319-3506 or email her at Melissa.Meyer@txdot.gov. In the event a public hearing is requested, one would be scheduled and notices would be published indicating the hearing date and location.

TRD-201904854

Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: December 17, 2019





How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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