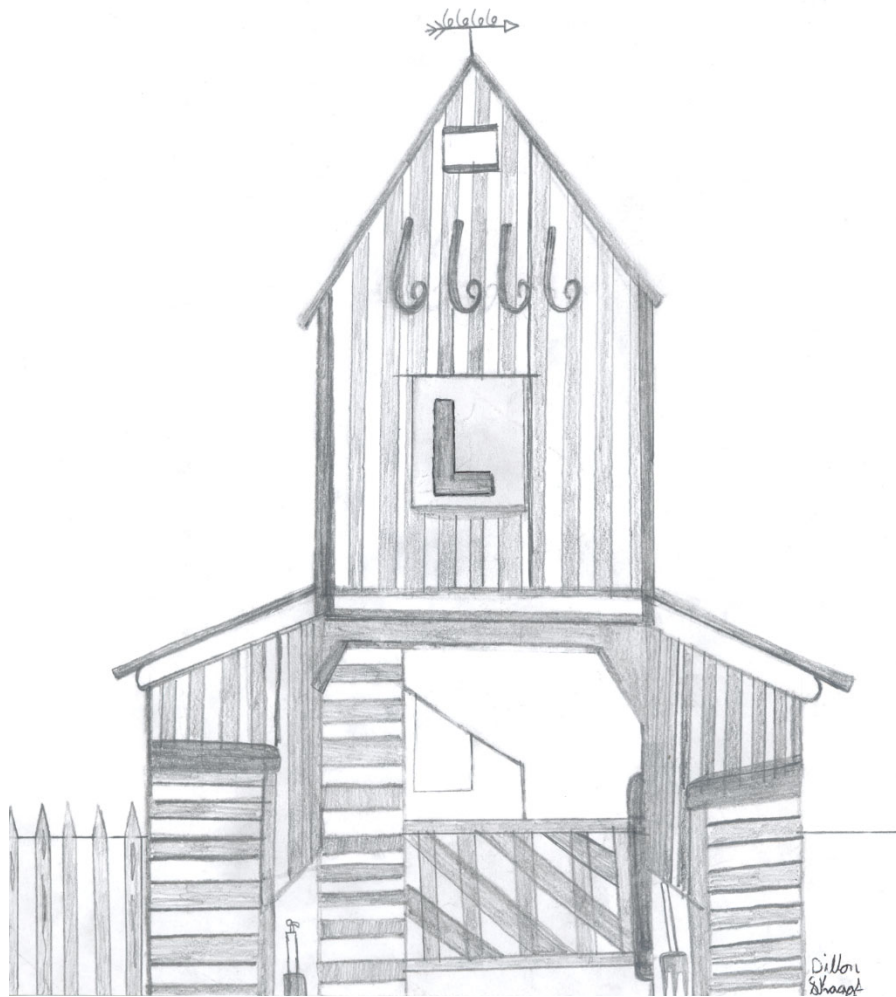

TEXAS REGISTER

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Pages 4777 - 4910



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

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FAX (512) 463-5569

<http://www.sos.state.tx.us>
register@sos.texas.gov

Secretary of State – Ruth R. Hughs

Director - Robert Sumners

Staff

Lauri Caperton
Cristina Jaime
Belinda Kirk
Jill S. Ledbetter
Cecilia Mena
Joy L. Morgan
Breanna Mutschler
Andrea Reyes
Barbara Strickland

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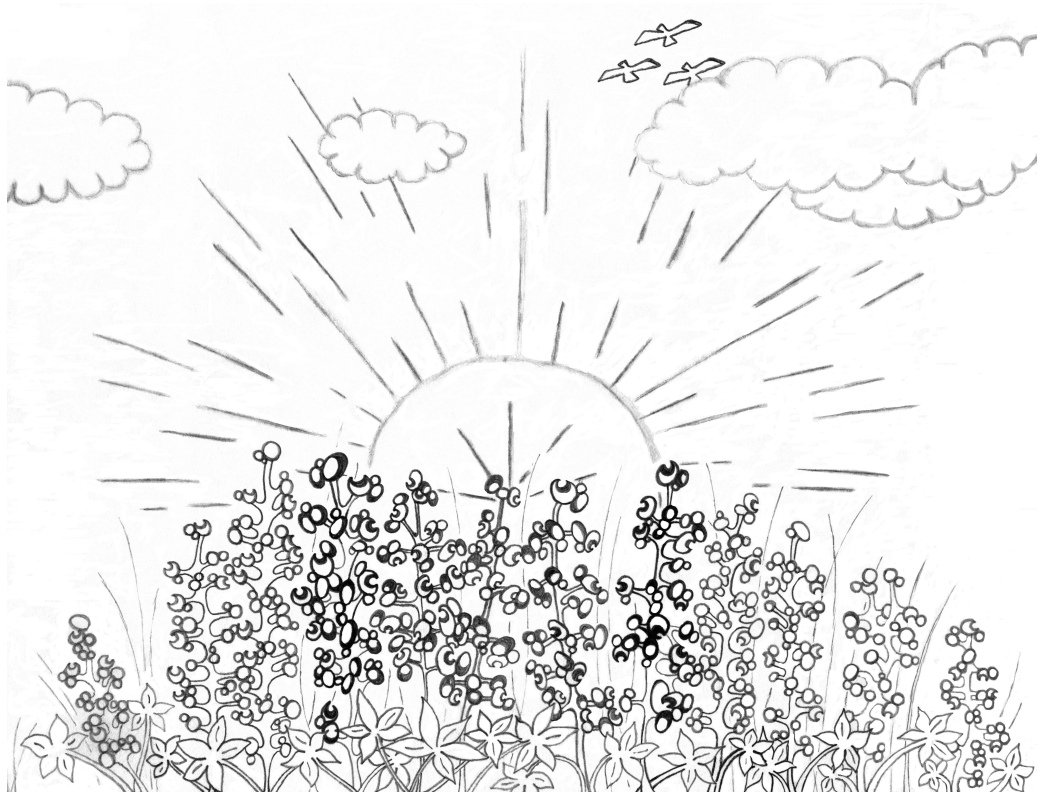
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THE GOVERNOR

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.

Proclamation 41-3688

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the resignation of the Honorable John Zerwas, and its acceptance, has caused a vacancy to exist in Texas State House of Representatives District No. 28, which is wholly contained within Fort Bend County; and

WHEREAS, Article III, Section 13 of the Texas Constitution and Section 203.002 of the Texas Election Code require that a special election be ordered upon such a vacancy, and Section 3.003 of the Texas Election Code requires the special election to be ordered by proclamation of the Governor; and

WHEREAS, pursuant to Section 203.004(a) of the Texas Election Code, the special election must be held on the first uniform date occurring on or after the 36th day after the date the election is ordered; and

WHEREAS, Tuesday, November 5, 2019, is the first uniform election date occurring on or after the 36th day after the date the election is ordered;

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held in Texas State House of Representatives District No. 28 on Tuesday, November 5, 2019, for the purpose of electing a state representative to serve out the unexpired term of the Honorable John Zerwas.

Candidates who wish to have their names placed on the special election ballot must file their applications with the secretary of state no later than 5:00 p.m. on Wednesday, September 4, 2019, in accordance with Section 201.054(a)(1) of the Texas Election Code.

Early voting by personal appearance shall begin on Monday, October 21, 2019, in accordance with Section 85.001(a) and (c) of the Texas Election Code.

A copy of this order shall be mailed immediately to the Fort Bend County Judge which is the county within which Texas State House of Representatives District No. 28 is wholly contained, and all appropriate writs shall be issued and all proper proceedings shall be followed to the end that said election may be held to fill the vacancy in Texas State House of Representatives District No. 28 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto 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 13th day of August, 2019.

Greg Abbott, Governor

TRD-201902860





THE ATTORNEY GENERAL

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

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

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

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

Requests for Opinions

RQ-0301-KP

Requestor:

The Honorable Vince Ryan

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Whether section 11.060(d) of the Education Code, regarding filling a vacancy on the board of trustees of an independent school district, applies to the Harris County Department of Education (RQ-0301-KP)

Briefs requested by September 20, 2019

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

TRD-201902952

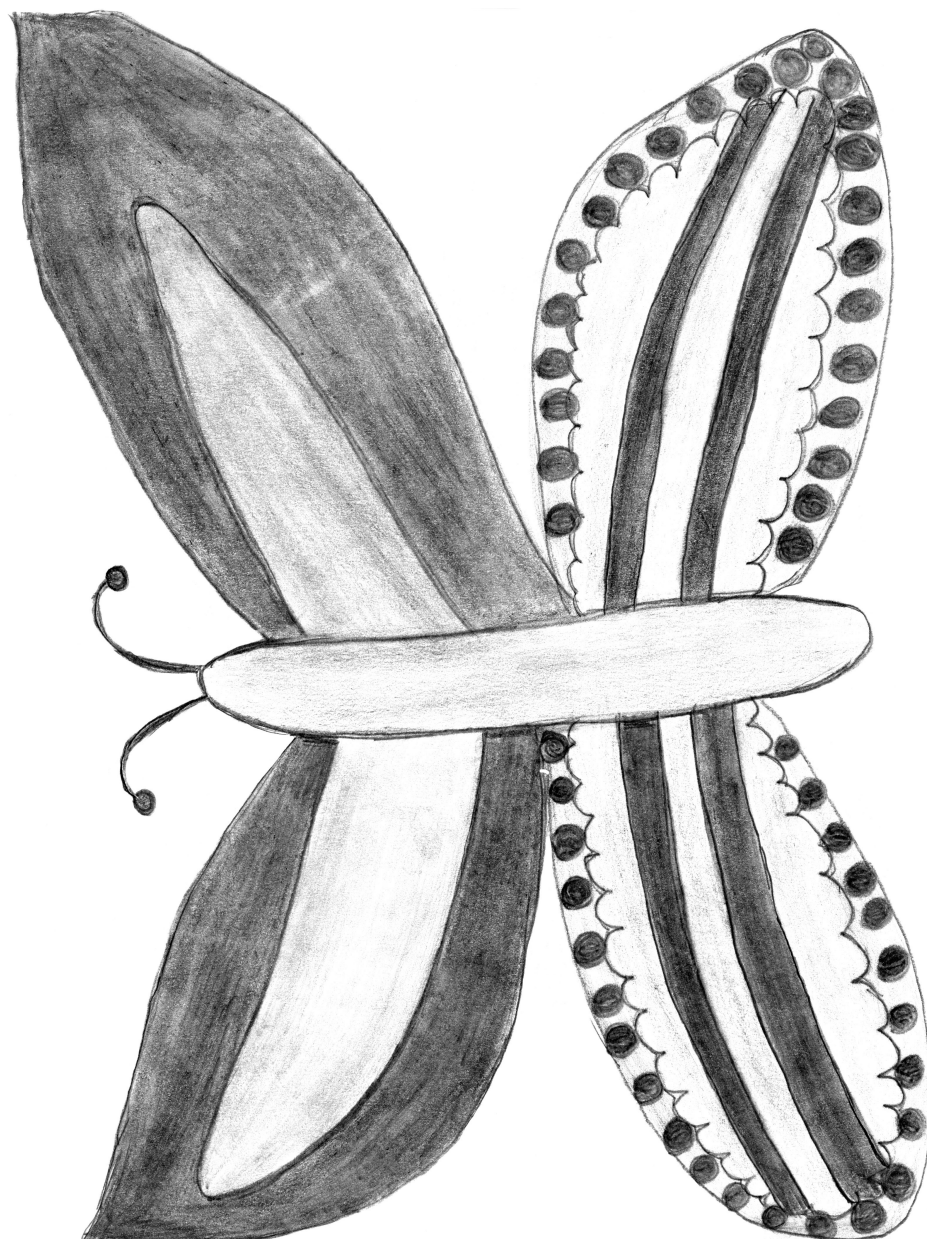
Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: August 28, 2019





PROPOSED RULES

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

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §351.3

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §351.3, concerning Recognition of Out-of-State License of Military Spouse.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with Senate Bill (S.B.) 1200, 86th Legislature, Regular Session, 2019, which requires the adoption of rules to implement the legislation.

S.B. 1200 amended Texas Occupations Code, Chapter 55, by adding §55.0041, to authorize certain military spouses to engage in a business or occupation in the State of Texas without having a license issued in Texas. The proposed rule requires the military spouse to be currently licensed and in good standing in another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state. State agencies are directed to adopt rules not later than December 1, 2019.

SECTION-BY-SECTION SUMMARY

The proposed new §351.3 adds a new process to allow military spouses, who are currently licensed by another jurisdiction, the opportunity to begin working in the industry in Texas for up to three years without obtaining a Texas license.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years 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 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 create a new rule;

(6) the proposed rule will expand existing rules;

(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 there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

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; is amended to reduce the burden or responsibilities imposed on regulated persons by the rule; and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Constance Allison, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years that the rule is in effect, the public benefit will be improved job continuity for military spouses licensed by another jurisdiction and will provide military spouses the opportunity to begin working within the industry in Texas for up to three years without going through the state licensure process. It also provides a benefit by recognizing the dedication of the spouses that support our military.

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. This alternative is optional and dependent upon the military spouse having a substantially equivalent license in another state, which would also result in the waiver of the application fee.

TAKINGS IMPACT ASSESSMENT

HHSC has determined 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 the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 19R068" in the subject line.

STATUTORY AUTHORITY

The new section is authorized by Texas Occupations Code, §55.0041 and Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

The new section implements Texas Occupations Code, §55.0041.

§351.3. Recognition of Out-of-State License of Military Spouse.

(a) For the purposes of this section, the definitions found in Texas Occupations Code Chapter 55.001 are hereby adopted by reference.

(b) This section applies to all licenses issued by the Health and Human Services Commission (HHSC) under authority granted by the laws of the State of Texas, unless a more specific rule concerning recognition of out-of-state licenses of military spouses applies to a license type issued by HHSC.

(c) A military spouse may engage in a business or occupation as if licensed in the State of Texas without obtaining the applicable license in Texas if the spouse:

(1) is currently licensed in good standing by another jurisdiction that has licensing requirements substantially equivalent to the requirements of a license in this state;

(2) notifies HHSC in writing of the spouse's intent to practice in this state;

(3) submits to HHSC proof of the spouse's residency in this state and a copy of the spouse's military identification card; and

(4) receives a verification letter from HHSC that:

(A) HHSC has verified the spouse's license in the other jurisdiction; and

(B) the spouse is authorized to engage in the business or occupation in accordance with the Act and rules for that business or occupation.

(d) HHSC will review and evaluate the following criteria, if relevant to a Texas license, when determining whether another state's licensing requirements are substantially equivalent to the requirements for a license under the statutes and regulations of this state:

(1) whether the other state requires an applicant to pass an examination that demonstrates competence in the field in order to obtain the license;

(2) whether the other state requires an applicant to meet any experience qualifications in order to obtain the license;

(3) whether the other state requires an applicant to meet the education qualifications in order to obtain the license; and

(4) the other state's license requirements, including the scope of work authorized to be performed under the license issued by the other state.

(e) The military spouse must submit:

(1) a written request to HHSC for recognition of the spouse's license issued by the other state; no fee will be required;

(2) any form and additional information regarding the license issued by the other state required by the rules of the specific program or division within HHSC that licenses the business or occupation;

(3) proof of residency in this state;

(4) a copy of the military spouse's identification card; and

(5) proof the military service member is stationed at a military installation in Texas.

(f) Upon verification from the licensing jurisdiction of the military spouse's license and if the license is substantially equivalent to a Texas license, HHSC shall issue a verification letter recognizing the licensure as the equivalent license in this state.

(g) The verification letter will expire three years from date of issuance or when the military service member is no longer stationed at a military installation in Texas, whichever comes first. The verification letter may not be renewed.

(h) A replacement letter may be issued after receiving a request for a replacement letter in writing or on a form, if any, required by the rules of the specific program or division within HHSC that licenses the business or occupation; no fee will be required.

(i) The military spouse shall comply with all applicable laws, rules, and standards of this state, including applicable Texas Health and Safety Code chapters and all relevant Texas Administrative Code provisions.

(j) HHSC may withdraw or modify the verification letter for reasons including the following:

(1) the military spouse fails to comply with subsection (i) of this section; or

(2) the military spouse's licensure required under subsection (c)(1) of this section expires or is suspended or revoked in another jurisdiction.

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 August 26, 2019.

TRD-201902899

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: October 6, 2019

For further information, please call: (512) 707-6101

◆ ◆ ◆

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 103. RULEMAKING PROCEDURE

7 TAC §103.6

The Texas State Securities Board proposes new §103.6, concerning Negotiated Rulemaking, pursuant to House Bill (HB) 1535 addition of §2-8 of the Texas Securities Act, during the 86th legislative session, which becomes effective September 1, 2019. The rule is proposed in order to comply with an amendment to the Texas Securities Act regarding establishing a policy on the use of negotiated rulemaking and with Texas Government Code, Chapter 2008.

Travis J. Iles, Securities Commissioner; and Clint Edgar, Deputy Securities Commissioner, have determined that for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Mr. Iles and Mr. Edgar have also determined that for each year of the first five years the proposed rule is in effect, the public benefit expected as a result of adoption of the proposed rule will be a clear, open, inclusive, and consistent process for the use of negotiated rulemaking in appropriate situations. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Iles and Mr. Edgar have determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed new rule does not limit, expand, or repeal an existing regulation. The proposed rule would create a new rule to comply with an amendment to the Texas Securities Act.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters

within its jurisdiction; and prescribing different requirements for different classes.

The proposed rule affects Texas Civil Statutes, Articles 581-2-5, 581-2-8 (effective September 1, 2019), 581-3.D (effective September 1, 2019), 581-4.N, 581-4.P, 581-5.T, 581-7.A, 581-8, 581-12.C, 581-12-1.B, 581-13.D, 581-19.B, 581-28.A, 581-28.B, 581-28-1.B, 581-28-1.D, 581-42.A, 581-42.B, 581-44, 581-45.N, and Texas Government Code, Chapter 2008.

§103.6. Negotiated Rulemaking.

(a) Policy. It is the Board's policy to encourage the use of negotiated rulemaking in appropriate situations. When the Securities Commissioner finds that a rule to be proposed is likely to be complex, controversial, or affect disparate groups, the Commissioner may propose to engage in negotiated rulemaking in accordance with the Government Code, Chapter 2008.

(b) Appointment and duties of convener.

(1) The Deputy Securities Commissioner or the Deputy's designee shall serve as the negotiated rulemaking convener.

(2) The convener shall assist in identifying persons who are likely to be affected by a proposed rule, including those who oppose issuance of a rule. The convener shall discuss the items listed in Government Code, §2008.052(c), with those persons or their representatives.

(3) The convener shall then recommend to the Commissioner whether negotiated rulemaking is a feasible method to develop the proposed rule and shall report on the relevant considerations, including those listed in §2008.052(d).

(c) Notice of intent to engage in negotiated rulemaking. After considering the convener's recommendation and report, the Commissioner may direct the Agency Staff to engage in negotiated rulemaking in accordance with the provisions of Government Code, Chapter 2008, and authorize the Agency Staff to perform the duties and requirements set forth Chapter 2008, including providing any required notices, establishing a negotiated rulemaking committee, and appointing the members of the committee, and appointing a facilitator.

(d) Duties of the negotiated rulemaking committee and facilitator.

(1) The facilitator shall preside over meetings of the negotiated rulemaking committee and assist the committee in establishing procedures for conducting negotiations and in attempting to arrive at a consensus on the proposed rule.

(2) At the conclusion of negotiations, the negotiated rulemaking committee shall send a written report to the Commissioner as provided in Government Code §2008.056(d).

(e) Notice and comment rulemaking. After considering the negotiated rulemaking committee's report, if the Commissioner intends to proceed with the rulemaking process, the Commissioner shall present the proposed rule to the Board for consideration in accordance with Government Code, Chapter 2001, Subchapter B.

(f) Rulemaking coordinator. The Board's Deputy Commissioner, or designee, shall act as the designated negotiated rulemaking coordinator to coordinate the implementation of the policy set out in subsection (a) of this section, serve as a resource for any staff training or education needed to implement negotiated rulemaking procedures, and collect data to evaluate the effectiveness of the implementation of negotiated rulemaking procedures.

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



CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS

7 TAC §104.7

The Texas State Securities Board proposes an amendment to §104.7, concerning Preliminary Evaluation of License Eligibility. This section contains rulemaking required by Chapter 53 of the Texas Occupations Code (Consequences of Criminal Conviction), Subchapter D, which provides a means for potential applicants to obtain preliminary information regarding their eligibility for an occupational license before they begin a training program for the occupation. The amendment would implement the requirements of House Bill 1342 (HB 1342), passed during the 2019 Regular Session of the Texas Legislature, that amended Chapter 53. The changes made by HB 1342 apply to a request for a preliminary evaluation of license eligibility submitted on or after September 1, 2019.

Specifically, the proposed amendment would alter the factors to be considered in determining whether a conviction relates to a registration or license issued by this Agency to a securities professional, add new factors that must be considered in determining eligibility and remove other factors from consideration. The proposed amendment would also include specific references to the new or amended sections of Chapter 53 of the Texas Occupations Code that will require additional information to be included in the determination letter concerning factors considered that served as the basis for potential ineligibility and a link to an Applicant Best Practices Guide, once such guide is developed and published by the state auditor.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to enhance opportunities for a person to obtain gainful employment in the securities industry after the person has been convicted of an offense and discharged the sentence for the offense. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section repeal in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1 and Texas Occupations Code, Chapter 53, Subchapter D. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Texas Occupations Code, Chapter 53, Subchapter D provides a means for a potential applicant to obtain preliminary information regarding their eligibility for an occupational license before they begin a training program for the occupation.

The proposal affects Texas Occupations Code, Chapter 53, Subchapter D, and Texas Civil Statutes, Article 581-14.

§104.7. Preliminary Evaluation of License Eligibility.

(a) (No change.)

(b) Factors considered. After determining a conviction directly relates to a license issued by the Agency, the [The] Agency considers the following evidence in determining whether the person is eligible for a license issued by the Agency [the present fitness of an applicant who has been convicted of a crime]. Accordingly, the requestor should provide information on the following:

(1) - (5) (No change.)

(6) Evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision.

(7) [(6)] Other evidence of the requestor's present fitness, including letters of recommendation, may also be provided and considered, including letters from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the requestor; the sheriff and chief of police in the community where the requestor resides; and any other persons in contact with the requestor.

(8) [(7)] It shall be the responsibility of the requestor to the extent possible to secure and provide to the Agency the letters of recommendation described by paragraph (7) of this subsection [of the prosecution, law enforcement, and correctional authorities as required under this section. The requestor shall also furnish proof to the Agency that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record

of good conduct and has paid all outstanding court costs; supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted].

- (c) (No change.)
- (d) Determination of eligibility; letter.
 - (1) (No change.)

(2) If the Agency determines that the requestor is ineligible for a license, the Agency shall issue a letter which complies with the requirements of Texas Occupations Code, §53.026(b) and §53.104(b), setting out each basis for potential ineligibility and the Agency's determination as to eligibility.

- (3) - (4) (No change.)

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

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.13

The Texas State Securities Board proposes an amendment to §109.13, concerning limited offering exemptions. The amendment would implement recommendations made by the Texas Sunset Advisory Commission to eliminate notarization requirements for forms when the Texas Securities Act does not otherwise require the form to be sworn. Specifically, subsection (l) would be amended to remove the reference in subparagraph (9)(A) to Form 133.29 requiring that the notice be sworn to correspond to the repeal of Form 133.29 and adoption of new Form 133.29 which is concurrently proposed for repeal and adoption in order to remove the requirements from the notice form that it be sworn. The new Form 133.29 would not require the notice form to be sworn.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to provide more efficiency in the filing of Form 133.29 with the Texas State Securities Board by removing unnecessary administrative burdens. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement

and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-5 and 581-7.

§109.13. *Limited Offering Exemptions.*

- (a) - (k) (No change.)

(l) Intrastate limited offering exemption. In addition to sales made under the Texas Securities Act, §5.I, the State Securities Board, pursuant to the Act, §5.T, exempts from the registration requirements of the Act, §7, any offer or sale of any securities by the issuer itself, or by a registered dealer acting as agent for the issuer provided all offers and sales are made pursuant to an offering made and completed solely within this state and all the conditions in paragraphs (1) - (11) of this subsection are satisfied.

- (1) - (8) (No change.)

- (9) Notice filing requirements.

(A) An issuer who is not a registered securities dealer and who does not sell securities by or through a registered securities dealer shall file a [sworn] notice on Form 133.29 not less than 10 business days before any sale claimed to be exempt under this subsection may be consummated for sales under paragraph (1)(B) of this subsection, in whole or in part to individual accredited investors, as defined in §107.2 of this title.

- (B) - (E) (No change.)

- (10) - (11) (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.



CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §§113.1, 113.4, 113.11

The Texas State Securities Board proposes amendments to §113.1, concerning qualification of securities; §113.4, concerning application for registration; and §113.11, concerning shelf registration of securities. Section 113.1 would be amended to delete the reference to Securities and Exchange Commission (SEC) Regulation "B" that has been repealed as obsolete due to the availability of other exemptions.

Section 113.4 would be amended to eliminate paragraph (c)(3), which references the consent to service of process filed through the Securities Registration Depository ("SRD") System, which was never implemented and to eliminate the cross-reference to paragraph (c)(3), contained in paragraph (c)(1).

Section 113.11 would be amended to remove the reference to SEC Form S-2 in paragraph (b)(1), which is no longer in use.

Clint Edgar, Deputy Securities Commissioner Director; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect the public benefit expected as a result of adoption of the proposed amendments will be to accurately coordinate provisions of the rules with federal standards and requirements and to eliminate outdated references. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rule's applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-7.

§113.1. *Qualification of Securities.*

A Regulation "A" filing [and "B" filings] with the SEC is a form [are forms] of exemption and cannot be the basis for a filing for registration by coordination with the State Securities Board under the Texas Securities Act, §7.C. Such a registration [registrations with the Board] should meet the requirements as outlined in the Act, §7.A or, if federal covered securities, the requirements in §114.4 of this title (relating to Filings and Fees).

§113.4. *Application for Registration.*

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

(c) Consents to service of process.

(1) Except as provided in paragraph [paragraphs] (2) [and (3)] of this subsection, all applications to register securities issued by an issuer which is organized under the laws of any other state, territory, or government, or domiciled in any state other than Texas, must include with the application a written consent to service of process duly executed by an authorized agent of the issuer appointing the Securities Commissioner irrevocably its true and lawful attorney upon whom process in any action or proceeding against such issuer arising out of any transaction subject to the Texas Securities Act may be served with the same effect as if such issuer were organized or created under the laws of Texas and had been lawfully served with process herein.

(2) (No change.)

[(3) The consent to service of process required for applications to register securities filed through the Securities Registration Depository System will satisfy, in all respects, the requirements governing consents to service of process set out in this subsection and in the Texas Securities Act, §8.]

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

§113.11. *Shelf Registration of Securities.*

(a) (No change.)

(b) Certain debt offerings by substantial issuers.

(1) This subsection (b) applies to the registration of debt securities of issuers eligible to use SEC Form [S-2 or] S-3 (17 Code of Federal Regulations [§239.12 and] §239.13), to register debt securities with the SEC under SEC Rule 415.

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

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

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



CHAPTER 114. FEDERAL COVERED SECURITIES

7 TAC §114.3, §114.4

The Texas State Securities Board proposes amendments to §114.3, concerning consents to service of process, and to §114.4, concerning filings and fees. Section 114.3 would be amended to remove subsection (c), which refers to the Securities Registration Depository ("SRD") System. The development of the SRD System, originally proposed by NASAA, has been abandoned.

Section 114.4 would be amended in part to implement recommendations made by the Texas Sunset Advisory Commission to remove notarization and sworn under oath requirements from the Agency's forms where the Texas Securities Act does not require these forms to be sworn. Specifically, subsections (a) and (f) of §114.4 would be amended to remove the references in subparagraph (1)(A) of each subsection to a notice filing being verified under oath to reflect the current requirements of the Registration Division for filings pursuant to this rule.

Subsection (b) of §114.4 would be amended to remove the reference in subparagraph (4)(A) to a notice filing being verified under oath to correspond to the proposed repeal of Form 133.5 and proposed adoption of new Form 133.5 which is concurrently proposed for repeal and adoption in order to remove the notarization requirements from the form.

In addition to the amendments to implement Sunset recommendations, a new subparagraph (C) would be added under subsection (a)(1) of §114.4 to address filings by unit investment trusts ("UITs"), which would allow them at their option to be filed and fees to be paid electronically through the EFD System. UIT filers would continue to have the option to file directly with the Agency.

A new paragraph (5) would also be added under subsection (b) to specifically address federal covered securities offered pursuant to SEC Regulation A, Tier 2 ("Regulation A+"). Currently these offerings fall within the catch-all for federal covered securities provided by subsection (a). To assist issuers in more readily locating the filing and fee requirements for Regulation A+ offerings, a specific provision covering these offerings would be provided in new paragraph (b)(5). No change would be made to the filing or fee requirements of this rule, other than to permit a filer to use the Uniform Notice Filing of Regulation A - Tier 2 Offering form instead of page 1, Items 1-6 of the Form U-1. The Regulation A - Tier 2 form includes a consent to service of process.

Clint Edgar, Deputy Securities Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division,

have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect the public benefit expected as a result of adoption of the proposed amendment to §114.3 will be to eliminate an outdated reference in §114.3; the public benefit expected as a result of the proposed amendments to §114.4 will be to provide more efficiency in the filing of Form 133.5 with the Texas State Securities Board by removing unnecessary administrative burdens; and to provide more efficiency for UIT filings and Regulation A+ filings by allowing electronic filings for UIT filings, by setting forth a specific filing requirement for Regulation A+ filings and by permitting Regulation A+ filers to use a different form for these filings. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. The EFD System charges users a one-time \$155 system use fee for each Form NF-UIT notice filing submitted through the System. This one-time system fee covers the initial filing at the trust level, as well as any corresponding amendment and renewal filings subsequently made through the EFD System. Since the use of the EFD System by UIT filers is optional, there is no anticipated economic cost to the filers to comply with the proposed amendment to §114.4(a)(1). There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rule's applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-5 and 581-7.

§114.3. *Consents to Service of Process.*

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

~~[(e) The consent to service of process filed through the Securities Registration Depository System will satisfy, in all respects, the requirements governing consents to service of process set out in this section and in the Texas Securities Act, §8.]~~

§114.4. *Filings and Fees.*

(a) Generally. Unless otherwise provided in subsection (b) of this section, prior to the initial offer of the federal covered securities in this state, the issuer shall provide to the Securities Commissioner:

(1) a notice filing, ~~[verified under oath by the applicant,]~~ consisting of:

(A) page 1 of a Form U-1, Uniform Application to Register Securities, with items 1-6 completed, or a document providing substantially the same information; ~~[or]~~

(B) if the issuer is an investment company, Form NF, Uniform Investment Company Notice Filing; ~~or [-]~~

(C) if the issuer is a unit investment trust, Form NF may be filed and the payment of the filing fee, set out in paragraph (3) of this subsection, paid electronically through the EFD System.

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

(b) Special circumstances.

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

(4) Secondary trading. A registered dealer or issuer that chooses to comply with the Texas Securities Act, §5.O(9), by filing a form, shall provide to the Securities Commissioner, prior to the sale of the securities in this state:

(A) a notice filing, ~~[verified under oath by the applicant,]~~ consisting of page 1 of a Form U-1, Uniform Application to Register Securities, with items 1-6 completed, or a document providing substantially the same information;

(B) - (D) (No change.)

(5) SEC Regulation A, Tier 2. Prior to the initial offer of the federal covered securities in this state, the issuer shall provide to the Securities Commissioner:

(A) a notice filing on either:

(i) Uniform Notice Filing of Regulation A - Tier 2 Offering form; or

(ii) page 1 of a Form U-1, Uniform Application to Register Securities, with items 1-6 completed, or a document providing substantially the same information;

(B) a consent to service of process signed by the issuer, if required by §114.3 of this title (relating to Consents to Service of Process), and if the notice filing required by subparagraph (A) of this paragraph is not made on the Uniform Notice Filing of Regulation A - Tier 2 Offering form; and

(C) the fee provided for in the Act, §35.A(1), plus one-tenth of 1.0% of the aggregate amount of federal covered securities proposed to be sold to persons located within this state based on the price at which such securities are to be offered to the public, as provided in the Act, §35.B(2).

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

(f) Period of effectiveness.

(1) The initial authorization for federal covered securities of an open-end investment company, as defined in the Investment Company Act of 1940, shall be effective until two months after the end of the issuer's fiscal year. After the initial authorization, the issuer or its agent may renew the authorization by submitting, within two months after the end of the issuer's fiscal year:

(A) a notice filing, ~~[verified under oath by the applicant,]~~ consisting of Form NF, Uniform Investment Company Notice Filing; and

(B) (No change.)

(2) - (5) (No change.)

(g) - (i) (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 August 20, 2019.

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §§115.1, 115.2, 115.4

The Texas State Securities Board proposes amendments to §115.1, concerning general provisions, to §115.2, concerning application requirements, and to §115.4, concerning evidences of registration. The sections would be amended remove the references to branch office registration requirements for dealers, and related registration fees. The amendments to §§115.1, 115.2, and 115.4 are required by House Bill 1535, enacted by the 86th Texas Legislature, that amended §35.B(1) of the Texas Securities Act to remove the requirement that branch offices of dealers and investment advisers be registered and the related requirement to pay a branch office registration fee of \$25. The sections would instead be amended to require branch offices of dealers to make a notice filing, which would not require any filing fee. Except for the registration and fee requirements, other existing requirements for branch offices set forth in the rules will continue to apply.

Subsection (a)(4) of §115.2 would also be amended to implement a management recommendation made by the Sunset Advisory Commission to eliminate notarization requirements from agency forms when the Texas Securities Act does not otherwise require the form to be sworn. This amendment would remove the requirement that a dealer's balance sheet, submitted as part of its application for registration, be attested by the applicant's principal financial officer before a notary. Instead the principal financial officer would certify the balance sheet as true and correct using Form 133.18, Certification of Balance Sheet by Principal Financial Officer. Form 133.18 is being repealed and replaced by a new form in related rulemaking to remove a notarization requirement.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments. Although there would be a negative fiscal impact, it is the direct result of the Legislature's change to the Texas Securities Act, rather than through Agency rulemaking. When the statutory change becomes effective, the Agency will no longer have the authority to collect fees relating to branch office registration or amendments to those registrations. These proposed amendments reflect that change in authority. A decrease in revenue resulting from the elimination of the branch office registration fee for both dealers and investment advisers was reflected in the fiscal note to HB 1535. According to the Comptroller of Public Accounts, "the provision that removes the requirement for registered entities to register individual branch offices would result in a revenue loss to the General Revenue Fund estimated to total \$425,850 per fiscal year, beginning in fiscal year 2020, based on collections from branch office registrations in fiscal year 2017."

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect the public benefit expected as a result of adoption of the proposed amendments will be to align the rule requirements for branch offices with changes made to the Texas Securities Act by eliminating the branch office registration requirement and removing unnecessary administrative burdens.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Although registration of branch offices will no longer be required under the Legislature's change to the Texas Securities Act, which implements the Sunset Commission Recommendation 1.3, the Agency continues to regulate dealer activities occurring at the branch offices. As the Sunset Commission noted, the Agency would continue to: (a) require location information about branch offices, (b) require the designation of a supervisor for each branch office who is responsible for the branch office's activities, and (c) be authorized to inspect a branch office and take action if needed. Similarly, any negative fiscal impact caused by the elimination of fees paid by branch offices for registration and amendments is the direct result of the Legislature's change to the Texas Securities Act, rather than through the Agency's rulemaking to implement the legislative change.

Comments on the proposals must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-18, and 581-35 (effective September 1, 2019).

§115.1. General Provisions.

(a) (No change.)

(b) Registration requirements of dealers, issuers, and agents, and notice filings for branch offices.

(1) Requirements of registration or notice filing.

(A) (No change.)

(B) Each branch office in Texas must make a notice filing to become designated as a branch office of a dealer [be registered]. A registered officer, partner, or agent must be named as supervisor.

(2) (No change.)

(c) - (d) (No change.)

§115.2. Application Requirements.

(a) Securities dealer application requirements. A complete application consists of the following and must be filed in paper form with the Securities Commissioner:

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

(4) a balance sheet prepared in accordance with United States generally accepted accounting principles reflecting the financial condition of the dealer as of a date not more than 90 days prior to the date of such filing. The balance sheet should be compiled, reviewed, or audited by independent certified public accountants or independent public accountants, or must instead be certified [attested] by [~~the sworn notarized statement of~~] the applicant's principal financial officer. If certified [attested] by the principal financial officer of the applicant, such officer shall make the certification on Form 133.18, Certification of Balance Sheet by Principal Financial Officer.

(5) - (6) (No change.)

(b) (No change.)

(c) Branch office designation [~~office registration~~] and inspection.

(1) A [~~request for registration of a branch office of a~~] dealer may designate a branch office [be made] upon initial application of the dealer or by amendment to a current Form BR [registration]. No sales-related activity may occur in any branch office location until such time as the dealer has notified [receives notification from] the Securities Commissioner that such location will function [has been approved] as a branch office [-]. The request for registration of a branch office may be

made] by submitting [the submission of] Form BR on CRD for FINRA member firms. For non-FINRA member firms, the request is made by submitting Form BR in paper form to the Securities Commissioner. [The fee for registration of each branch office is \$25.]

(2) Simultaneous with the designation [request for registration] of a branch office, a supervisor must be designated for that branch office. A supervisor is not required to be registered as a FINRA principal, but must be registered in Texas as an agent and is responsible for supervision of the activities of the branch office. A supervisor may not supervise sales activities encompassing a broader range of products than those covered by the supervisor's qualification examination(s). Within 10 business days after [~~from when~~] a supervisor ceases to be employed or registered in such capacity by the dealer, the dealer must designate a new supervisor, qualified by passage of the appropriate examinations, for the branch office. [~~must be designated. Absent the designation of a new supervisor to the Securities Commissioner within the 10 business day period, the registration of a branch office whose supervisor ceases to be employed as such by a dealer may be automatically terminated. The branch office registration may be reinstated upon the designation of a qualified supervisor and payment of the branch office registration fee.~~]

(3) Each branch office of a dealer who is registered with the Securities Commissioner is subject to unannounced inspections at any time during normal business hours.

(d) - (e) No change.)

§115.4. Evidences of Registration.

(a) Issuance. An evidence of registration or certificate of registration shall be issued for each registered securities dealer reflecting the registered officer or partner. [~~An evidence of registration shall be issued for each registered branch office reflecting the registered supervisor.~~]

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

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

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



7 TAC §115.6

The Texas State Securities Board proposes an amendment to §115.6, concerning Registration of Persons with Criminal Backgrounds. This section contains rulemaking required by §53.025 of the Texas Occupations Code, which requires licensing authorities to issue guidelines relating to the licensing of persons with criminal convictions. The proposed amendment would implement the requirements of House Bill 1342 (HB 1342), passed during the 2019 Regular Session of the Texas Legislature, that amended Chapter 53 of the Texas Occupations Code (Consequences of Criminal Conviction). The changes made by HB 1342 apply to an application for a license submitted on or after September 1, 2019. Specifically, the proposed amendment would alter the factors to be considered in determining whether

a conviction relates to a registered or licensed occupation, add new factors that must be considered in determining eligibility, and remove other factors from consideration. The proposed amendment would also include specific references to the new or amended sections of Chapter 53 of the Texas Occupations Code that will require the Agency to comply with new notification requirements in these sections. Finally, the proposed rule would also be amended to include new requirements added by HB 1342 set forth in new Texas Occupations Code, §53.026, concerning an Applicant Best Practices Guide, once such guide is developed and published by the state auditor on its website.

This proposal would implement the requirements of HB 1342, as they specifically relate to or concern the dealer or agent registration of individuals with criminal backgrounds and the Agency's process to review existing dealer and agent registrations and possibly take action to revoke or suspend the registrations on the basis of certain criminal convictions that may occur after the person is registered.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to enhance opportunities for a person to obtain gainful employment in the securities industry after the person has been convicted of an offense and discharged the sentence for the offense. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-14, and Texas Occupations Code, §53.025.

§115.6. *Registration of Persons with Criminal Backgrounds.*

(a) An application for registration may be denied, or a registration may be revoked or suspended, if the Securities Commissioner finds that the person has been convicted of any felony, or of a misdemeanor offense that directly relates to its duties and responsibilities. In determining whether a misdemeanor directly relates to such duties and responsibilities, the Securities Commissioner shall consider each of the following factors:

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

(3) the extent to which the registration applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant previously had been involved; ~~[and]~~

(4) the relationship of the crime to the ability or ~~[;]~~ capacity ~~[; or fitness]~~ required to perform the duties and discharge the responsibilities of a registered dealer or agent; and ~~[;]~~

(5) Any correlation between the elements of the crime and its duties and responsibilities.

(b) After the Securities Commissioner has determined the criminal conviction directly relates to the duties and responsibilities of the license, the [The] Securities Commissioner shall consider the following evidence in determining whether the person is eligible for a license issued by the Agency [the present fitness of an applicant who has been convicted of a crime]:

(1) - (5) (No change.)

(6) Evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision.

(7) ~~[(6)]~~ Other evidence of the applicant's present fitness, including letters of recommendation may be provided and considered, including letters from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff and chief of police in the community where the applicant resides; and any other persons in contact with the applicant.

(8) ~~[(7)]~~ It shall be the responsibility of the applicant to the extent possible to secure and provide to the Securities Commissioner the letters of recommendation described by paragraph (7) of this subsection [of the prosecution, law enforcement, and correctional authorities as required under this section. The applicant shall also furnish proof to the Securities Commissioner that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted].

(c) - (d) (No change.)

(e) Prior to taking any action under subsection (a) of this section to deny any application for registration, the State Securities Board shall comply with the notification requirements of Texas Occupations Code, §53.0231 Notice of Pending Denial of License, and §53.051.

(f) Prior to taking any action under subsection (a) of this section to revoke or suspend any application for registration, the State Securities Board shall comply with the notification requirements of Texas Occupations Code, §53.051.

(g) State Auditor Applicant Best Practices Guide.

(1) The State Securities Board shall post a link on its website to the Applicant Best Practices Guide, to be developed and published by the state auditor as required by Texas Occupations Code, §53.026. This guide, which shall be posted once it becomes available, shall set forth best practices for an applicant with a prior conviction to use when applying for a license.

(2) In each notice to deny, revoke, or suspend a registration or to deny a person the opportunity be examined for a registration, the State Securities Board shall include a link to the guide as described in 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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Travis J. Iles

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7 TAC §115.18

The Texas State Securities Board proposes an amendment to §115.18, concerning Special Provisions Relating to Military Applicants. The amendment will implement the requirements of Senate Bill 1200, passed in the 2019 Texas Legislative Session, which added §55.0041 to the Texas Occupations Code. Related forms are being concurrently proposed as are comparable amendments to the corresponding rule for investment advisers and investment adviser representatives.

Section 55.0041 of the Texas Occupations Code, effective September 1, 2019, authorizes a military spouse to engage in a business or occupation for which a license or registration is required without obtaining the applicable license or registration if the military spouse holds a current license or registration, that is in good standing, issued by another jurisdiction that has licensing or registration requirements that are substantially equivalent to the requirements for the license or registration in Texas. The statute requires the military spouse to comply with all other laws and regulations applicable to the business or occupation in Texas. The military spouse is authorized to engage in the business or occupation only for the period during which the military service member to whom the military spouse is married is stationed at a military installation in Texas but not to exceed three years from the date the spouse receives the requisite confirmation from the agency.

Most participants in the securities industry acting as dealers or as agents of dealers are registered and practice in multiple jurisdictions. Dealer firms that have a compliance department are unlikely to want to keep track of the unique Texas process that allows a military spouse to operate as an agent without registering. In light of this, and in keeping with the spirit of the bill, the proposed amendment would provide the option in paragraph

(3) of new subsection (h) (Option 1) to allow military spouses to register and receive a waiver or refund of the initial application and renewal fees for the period covered by §55.0041 in which they would not be required to be registered to conduct activity in Texas.

The Central Registration Depository (CRD) System is used by dealers and their agents to process virtually all Texas dealer and agent registrations. Only applications and renewals with reportable disclosure items or deficiencies remain pending for more than a few days before registration is effective. It is therefore expected that most applications and renewals filed by military spouses choosing Option 1 will, similar to applications filed by other applicants, be processed almost immediately.

Since a military spouse choosing Option 1 (filing through the CRD System) would have to pay the registration fee (initial or renewal) to use the electronic system, the amendment would provide for a refund to a military spouse who pays the fee. This would enable electronic filers to take advantage of the fee waiver authorized by statute. To avoid problems associated with processing stale claims, subsection (h) would provide that a refund request must be received within four years from the date the fee was collected or received. Current law and Board rules already provide for the waiver (or refund) of the initial application fee for military spouses. Accordingly, that procedure, provided under subsection (c) of §115.18, is referenced in the proposed amendment. A new form is being concurrently proposed to allow an eligible military spouse choosing this option to apply for a waiver or refund of a renewal fee in the second and third years of registration in Texas.

Eligible military spouses (or the firms that employ them) may also elect "Option 2." This option, set forth in paragraph (4) of new subsection (h), would track the requirements of the statute by requiring the military spouse to do the following before engaging in the practice of the securities business without first obtaining Texas dealer or agent registration: notify the Agency of the military spouse's intent to practice in Texas; submit to the Agency proof of the spouse's residency in Texas and a copy of the spouse's military identification card; and receive confirmation from the Agency that the Agency has verified the spouse's license in the other jurisdiction and authorized the spouse to engage in the specified activity in Texas without registration. A new form is being concurrently proposed for use by an eligible military spouse choosing this option to request and obtain recognition of out-of-state license or registration.

Additionally, since engaging in unregistered activity can result in administrative, civil, or criminal action against the military spouse and/or the employing firm, the proposed amendment would impose a requirement on a military spouse choosing Option 2 (operating in Texas without a dealer or agent registration) to notify the Securities Commissioner within 30 days if circumstances change and he or she is no longer eligible for §55.0041 treatment and immediately cease activity until such time as he or she becomes registered in the appropriate capacity to conduct securities activity in Texas. This requirement is also noted in proposed new Form 133.23, Request for Recognition of Out-Of-State License or Registration by a Military Spouse, which is being concurrently proposed. Option 2 would, upon issuance of the confirmation by the Agency, be treated as a notice filing, subject to renewal on a calendar year basis, so continued eligibility of the unregistered military spouse can be reassessed annually.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division;

have determined that for the first five-year period the proposed amendment is in effect there may be foreseeable fiscal implications as a result of enforcing or administering the proposed amendment on state, but not local, government.

The effect on state government for the first five-year period that the proposed amendment will be in effect is an estimated loss in revenue as a result of the up to two years of renewal fee waivers or refunds that would be granted to military spouses that remain in the state after their first year for the subsequent two one-year renewal periods. Although there would be a fiscal impact, it is the result of legislation rather than Agency rulemaking. The fiscal note to Senate Bill 1200 reflected that no significant fiscal implication to the State is anticipated. According to the Comptroller of Public Accounts (CPA), under current law, license application and examination fees are waived for military spouses who hold a current license issued by another jurisdiction with substantially equivalent license requirements, therefore the bill would have no revenue implications. The Agency did not receive any requests for refunds or waivers of initial registration fees from military applicants or other requests under current §115.18 in fiscal years 2018 or 2017. Based on the absence of any such requests in the past two fiscal years, the anticipated fiscal impact is expected to be negligible.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to ease regulatory and financial burdens of certain military spouses, licensed in good standing as securities professionals in another state, who are relocating to Texas. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation. Although military spouses will be eligible for waivers or refunds of initial registration and renewal fees due to new Texas Occupations Code §55.0041 (which is an expansion of current law and Board rules that apply to initial applications only), the anticipated negative fiscal impact that may be caused by the elimination of renewal fees of military spouses is the direct result of the Legislature's adoption of new Texas Occupations Code §55.0041, rather than through the Agency's rulemaking to implement the legislative change.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to

(512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-35.

§115.18. Special Provisions Relating to Military Applicants.

(a) - (g) (No change.)

(h) Recognition of out-of-state license or registration of a military spouse as authorized by Occupations Code, §55.0041.

(1) A military spouse may use the procedure set out in this subsection if he or she holds a current registration in another jurisdiction;

(2) The period covered by this subsection is only for the time during which the military service member to whom the military spouse is married is stationed at a military installation in Texas. This period may not exceed three years from the date the military spouse:

(A) first becomes registered in Texas under Option 1, set out in paragraph (3) of this subsection; or

(B) first receives the confirmation from the Registration Division under Option 2, set out in paragraph (4)(C)(ii) of this subsection.

(3) Option 1: registration in Texas with waiver or refund of the initial registration and renewal fees. If the military spouse is registered in Texas, for all or part of the period set out in paragraph (2) of this subsection, he or she may request a waiver or refund of a fee previously paid.

(A) The initial registration fee may be waived or refunded by following the procedure set out in subsection (c) of this section, including filing Form 133.19, Waiver or Refund Request by a Military Applicant.

(B) A renewal fee may be waived by submitting Form 133.22, Waiver or Refund Request by a Military Spouse for a Renewal Fee, at the time the renewal is submitted. A refund of a renewal fee that was paid in error, is requested by submitting Form 133.22 within four years from the date the fee was collected or received.

(4) Option 2: notification and authorization of activity without registration. Upon confirmation under subparagraph (C) or (D) of this paragraph, the military spouse will be considered to be notice filed in Texas. Such notice filing expires at the end of the calendar year.

(A) A military spouse may engage in activity without a license or registration under the authority of Occupations Code,

§55.0041, and this paragraph, only for the period specified in paragraph (2) of this subsection.

(B) A military spouse who becomes ineligible under Occupations Code, §55.0041, or paragraph (1) or (2) of this subsection prior to the three year period identified in paragraph (2), must notify the Securities Commissioner of such ineligibility within 30 days and immediately cease activity until such time as he or she is registered in the appropriate capacity to conduct activity in Texas.

(C) Before engaging in an activity requiring registration in Texas, the military spouse must initially:

(i) provide notice of his or her intent to engage in activity in Texas and specify the type of activity by filing with the Securities Commissioner:

(I) Form 133.23, Request for Recognition of Out-Of-State License or Registration by a Military Spouse;

(II) proof of his or her residency in Texas; and

(III) a copy of his or her military identification card.

(ii) receive confirmation that the Registration Division:

(I) has verified the individual's license in another jurisdiction; and

(II) authorizes the individual to engage in the specified activity.

(D) To continue to conduct business in Texas without registration under Option 2, after the expiration of the initial confirmation under subparagraph (C)(ii), the military spouse must renew annually on the same schedule as renewals of registration. This enables the Registration Division to determine that the military spouse remains eligible under Occupations Code, §55.0041, to continue to conduct securities activities in Texas without being registered.

(i) A renewal is made by submitting the same documents identified in subparagraph (C)(i) of this paragraph.

(ii) A renewal is not effective until the military spouse receives confirmation that the Registration Division:

(I) has verified the individual's license in another jurisdiction; and

(II) authorizes the individual to engage in specified activity.

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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Travis J. Iles

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7 TAC §115.22

The Texas State Securities Board proposes new §115.22, concerning electronic submission of forms and fees. The new rule

would implement a management recommendation of the Sunset Advisory Commission to allow dealer and agent applicants the option to electronically submit registration documents (those not presently filed through the CRD System) with the Agency that are currently being submitted in paper format. Forms, payments, and fees currently required to be submitted through CRD will continue to be submitted through and maintained on that system.

Since these electronic filing and fee payment processes are still being developed, the proposal specifically addresses applicants - the category specified in the Sunset recommendation. However, once staff has experience with the electronic submission system, the staff contemplates expanding it to cover other filings and fees. Subsection (c) in the proposal takes this future expansion into account.

Staff anticipates initially the electronic submission system will operate to permit an applicant to submit electronic copies of required documents as attachments through an email address dedicated solely for that purpose. A process using the Agency's email system, which automatically scans emails and attachments for viruses and malware, has already been implemented to accomplish this goal of the Sunset recommendation.

Clint Edgar, Deputy Securities Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that, for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule. The Agency staff will administer the optional, electronic submission of forms portion of the rule by using existing resources. The portion of the proposed rule concerning optional online fee submissions would not impose a cost on the Agency because it is not being implemented at this time.

When the Agency implements an online payment system in the future, there would be a cost to the Agency and state government, but at this time that future cost cannot be ascertained. The Agency currently lacks sufficient information to provide an estimate of the anticipated cost to implement an online payment system, because implementation will require the Agency to use the Texas.gov payment system, operated by DIR. DIR has plans to replace this system with a newer, updated system, which DIR anticipates will significantly decrease the implementation costs to the Agency. The Agency is deferring implementation of the online payment system portion of the rule until DIR puts this new system in place. The actual costs to the Agency and state government to implement the Agency's online acceptance of dealer and agent application fees through the new DIR system are unknown at this time and there is no timeline currently in place for the implementation of DIR's new system.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed rule is in effect the public benefit expected as a result of adoption of the proposed rule will be to reduce the burden on applicants by providing an online option for submission of application forms and supplemental documents and, when implemented in the future, and option for fee payment other than to mail in checks.

Due to the choices provided in the proposed rule, which would give filers the options to pay online rather than by check and to submit documents electronically or on paper, there will be no adverse economic effect on micro- or small businesses or rural

communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There is no anticipated economic cost to persons who are required to comply with the rule as proposed. Once the online payment system is implemented through Texas.gov, credit card payments submitted through that site will be required to pay an online processing fee (or convenience fee) in addition to the underlying state fee for the registration or service. This additional processing fee would be a cost incurred by each of the Agency's applicants who opt to pay a fee electronically, when that service is available. At the present time, it appears that the maximum online processing fee is \$5 for an annual occupational license. Comptroller's APS 029, updated 8/31/2018. Since the use of the online system to pay a fee electronically will be optional, there is no anticipated economic cost to the filers to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed rule does not create a new regulation, or expand, limit or repeal an existing regulation. Although the proposal creates a new rule, there would be no new regulation created since the new rule only addresses the manner in which fees can be paid and filings made. The filings and fees affected by the proposal are ones that are already required by statute and current rules.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

§115.22. *Electronic Submission of Forms and Fees.*

(a) This section does not apply to forms or fees required by §115.2 of this chapter (relating to Application Requirements), to be submitted electronically through the CRD System.

(b) Documents and fees submitted by applicants for dealer and agent registration may, at the option of the filer, be submitted electronically to the Securities Commissioner.

(c) Filings made and fees paid by dealers and agents may be submitted electronically, as the Agency's system is developed to accept them.

(d) All electronic submissions of forms or fees must be made in accordance with the submission procedures set out on the Agency's website (www.ssb.texas.gov). Please check the Agency's website for a complete list of forms and fees that are currently being accepted electronically.

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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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §§116.1, 116.2, 116.4

The Texas State Securities Board proposes amendments to §116.1, concerning general provisions, to §116.2, concerning application requirements, and to §116.4, concerning evidences of registration. The sections would be amended to remove the references to branch office registration requirements for investment advisers and related registration fees. The amendments to §§116.1, 116.2, and 116.4 are required by House Bill 1535, enacted by the 86th Texas Legislature, that amended §35.B(1) of the Texas Securities Act to remove the requirement that branch offices of dealers and investment advisers be registered and the related requirement to pay a branch office registration fee of \$25. The sections would instead be amended to require branch offices of investment advisers to make a notice filing, which would not require any filing fee. Other requirements for branch offices set forth in the rules will continue to apply.

Subsection (a)(2)(B) of §116.2 would also be amended to implement a management recommendation made by the Sunset Advisory Commission to eliminate notarization requirements from agency forms when the Texas Securities Act does not otherwise require the form to be sworn. This amendment would remove the requirement that an investment adviser's balance sheet, submitted as part of its application for registration, be attested by the applicant's principal financial officer before a notary. Instead the principal financial officer would certify the balance sheet as true and correct using Form 133.18, Certification of Balance Sheet by Principal Financial Officer. Form 133.18 is being repealed and replaced by a new form in related rulemaking to remove a notarization requirement.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division,

have determined that for the first five-year period the proposed amendments are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments. Although there would be a negative fiscal impact, it is the result of the Legislature's change to the Texas Securities Act, rather than through Agency rulemaking. When the statutory change becomes effective, the Agency will no longer have the authority to collect fees relating to branch office registration or amendments to those registrations. These proposed amendments reflect that change in authority. A decrease in revenue resulting from the elimination of the branch office registration fee for both dealers and investment advisers was reflected in the fiscal note to HB 1535. According to the Comptroller of Public Accounts, "the provision that removes the requirement for registered entities to register individual branch offices would result in a revenue loss to the General Revenue Fund estimated to total \$425,850 per fiscal year, beginning in fiscal year 2020, based on collections from branch office registrations in fiscal year 2017."

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendments are in effect, the public benefit expected as a result of adoption of the proposed amendments will be to align the rule requirements for branch offices with changes made to the Texas Securities Act by eliminating the branch office registration requirement and removing unnecessary administrative burdens.

There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendments are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Although registration of branch offices will no longer be required under the Legislature's change to the Texas Securities Act, which implements the Sunset Commission Recommendation 1.3, the Agency continues to regulate investment adviser activities occurring at the branch offices. As the Sunset Commission noted, the Agency would continue to: (a) require location information about branch offices, (b) require the designation of a supervisor for each branch office who is responsible for the branch office's activities, and (c) be authorized to inspect a branch office and take action if needed. Similarly, any negative fiscal impact caused by the elimination of fees paid by branch offices for registration and amendments is the direct result of the Legislature's change to the Texas Securities Act, rather than through the Agency's rulemaking to implement the legislative change.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sec-

tions in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-18, and 581-35 (effective September 1, 2019).

§116.1. General Provisions.

(a) (No change.)

(b) Registration of investment advisers, and investment adviser representatives, and notice filings for branch offices.

(1) Requirements of registration or notice filing.

(A) (No change.)

(B) Each branch office of a registered investment adviser in Texas must make a notice filing to become designated as a branch office of the investment adviser [be registered]. A registered officer, partner, or investment adviser representative must be named as supervisor.

(2) (No change.)

(c) - (d) (No change.)

§116.2. Application Requirements.

(a) Investment adviser and investment adviser representative application requirements. A complete application consists of the following:

(1) (No change.)

(2) items filed in paper form with the Securities Commissioner:

(A) (No change.)

(B) a balance sheet prepared in accordance with United States generally accepted accounting principles reflecting the financial condition of the investment adviser as of a date not more than 90 days prior to the date of such filing. The balance sheet should be compiled, reviewed, or audited by independent certified public accountants or independent public accountants, or must instead be certified [attested] by [the sworn notarized statement of] the applicant's principal financial officer. If certified [attested] by the principal financial officer of the applicant, such officer shall make the certification on Form 133.18, Certification of Balance Sheet by Principal Financial Officer.

(C) - (E) (No change.)

(b) (No change.)

(c) Branch office designation [registration] and inspection.

(1) An [A request for registration of a branch office of an] investment adviser may designate a branch office [be made] upon initial application of the investment adviser or by amendment to a current Form BR [registration]. No investment advisory activity may occur in

any branch office location until such time as the investment adviser has notified [receives notification from] the Securities Commissioner that such location will function [has been approved] as a branch office [- The request for registration of a branch office is made] by submitting [the submission of] Form BR on CRD. [The fee for registration of each branch office is \$25-]

(2) Simultaneous with the designation [request for registration] of a branch office, a supervisor must be named for that branch office. The supervisor must satisfy the examination qualifications required of the investment adviser before the branch office is designated [may be registered]. A supervisor is responsible for supervision of the activities of the branch office. Within 10 business days after [from when] a supervisor ceases to be employed or registered in such capacity by the investment adviser, the investment adviser must designate a new supervisor, qualified by passage of the appropriate examinations, for the branch office [must be named. Absent the designation of a new supervisor to the Commissioner within the 10 business day period, the registration of a branch office whose supervisor ceases to be employed as such by an investment adviser shall be automatically terminated. The branch office registration may be reinstated upon the designation of a qualified supervisor and payment of the branch office registration fee.]

(3) Each branch office of an investment adviser who is registered with the Commissioner is subject to unannounced inspections at any time during normal business hours.

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

§116.4. Evidences of Registration.

(a) Issuance. An evidence of registration or certificate of registration shall be issued for each registered investment adviser reflecting the registered officer or partner. [An evidence of registration shall be issued for each registered branch office reflecting the registered supervisor.]

(b) - (e) (No change.)

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

Filed with the Office of the Secretary of State on August 20, 2019.

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



7 TAC §116.6

The Texas State Securities Board proposes an amendment to §116.6, concerning Registration of Persons with Criminal Backgrounds. This section contains rulemaking required by §53.025 of the Texas Occupations Code, which requires licensing authorities to issue guidelines relating to the licensing of persons with criminal convictions. The proposed amendment would implement the requirements of House Bill 1342 (HB 1342), passed during the 2019 Regular Session of the Texas Legislature, that amended Chapter 53 of the Texas Occupations Code (Consequences of Criminal Conviction). The changes made by HB 1342 apply to an application for a license submitted on or after September 1, 2019. Specifically, the proposed amendment would alter the factors to be considered in determining whether

a conviction relates to a registered or licensed occupation, add new factors that must be considered in determining eligibility, and remove other factors from consideration. The proposed amendment would also include specific references to the new or amended sections of Chapter 53 of the Texas Occupations Code that will require the Agency to comply with new notification requirements in these sections. Finally, the proposed rule would also be amended to include new requirements added by HB 1342 set forth in new Texas Occupations Code, §53.026, concerning an Applicant Best Practices Guide, once such guide is developed and published by the state auditor on its website.

This proposal would implement the requirements of HB 1342, as they specifically relate to or concern the investment adviser or representative registration of individuals with criminal backgrounds and the Agency's process to review existing investment adviser and representative registrations and possibly take action to revoke or suspend the registrations on the basis of certain criminal convictions that may occur after the person is registered.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to enhance opportunities for a person to obtain gainful employment in the securities industry after the person has been convicted of an offense and discharged the sentence for the offense. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-14, and Texas Occupations Code, §53.025.

§116.6. Registration of Persons with Criminal Backgrounds.

(a) An [The] application for registration may be denied, or a registration may be revoked or suspended, [suspended, or revoked] if the Securities Commissioner finds that the person has been convicted of any felony, or of a misdemeanor offense that directly relates to its duties and responsibilities. In determining whether a misdemeanor conviction directly relates to such duties and responsibilities, the Securities Commissioner shall consider each of the following factors:

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

(3) the extent to which the registration applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant previously had been involved; [and]

(4) the relationship of the crime to the ability or [-] capacity; or fitness] required to perform the duties and discharge the responsibilities of a registered investment adviser or investment adviser representative; and [-]

(5) Any correlation between the elements of the crime and its duties and responsibilities.

(b) After the Securities Commissioner has determined the criminal conviction directly relates to the duties and responsibilities of the license, the [The] Securities Commissioner shall consider the following evidence in determining whether the person is eligible for a license issued by the Agency [the present fitness of an applicant who has been convicted of a crime]:

(1) - (5) (No change.)

(6) Evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision.

(7) [~~(6)~~] Other evidence of the applicant's present fitness, including letters of recommendation may be provided and considered, including letters from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff and chief of police in the community where the applicant resides; and any other persons in contact with the applicant.

(8) [~~(7)~~] It shall be the responsibility of the applicant to the extent possible to secure and provide to the Securities Commissioner the letters of recommendation described by paragraph (7) of this subsection [of the prosecution, law enforcement, and correctional authorities as required under this section. The applicant shall also furnish proof to the Securities Commissioner that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted].

(c) - (d) (No change.)

(e) Prior to taking any action under subsection (a) of this section to deny any application for registration, the State Securities Board

shall comply with the notification requirements of Texas Occupations Code, §53.0231 Notice of Pending Denial of License, and §53.051.

(f) Prior to taking any action under subsection (a) of this section to revoke or suspend any application for registration, the State Securities Board shall comply with the notification requirements of Texas Occupations Code, §53.051.

(g) State Auditor Applicant Best Practices Guide.

(1) The State Securities Board shall post a link on its website to the Applicant Best Practices Guide, to be developed and published by the state auditor as required by Texas Occupations Code, §53.026. This guide, which shall be posted once it becomes available, shall set forth best practices for an applicant with a prior conviction to use when applying for a license.

(2) In each notice to deny, revoke, or suspend a registration or to deny a person the opportunity to be examined for a registration, the State Securities Board shall include a link to the guide as described in 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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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



7 TAC §116.18

The Texas State Securities Board proposes an amendment to §116.18, concerning Special Provisions Relating to Military Applicants. The amendment is proposed to implement the requirements of Senate Bill 1200, passed in the 2019 Texas Legislative Session, which added §55.0041 to the Texas Occupations Code. Related forms are being concurrently proposed as are comparable amendments to the corresponding rule for dealers and agents.

Section 55.0041 of the Texas Occupations Code, effective September 1, 2019, authorizes a military spouse to engage in a business or occupation for which a license or registration is required without obtaining the applicable license or registration if the military spouse holds a current license or registration, that is in good standing, issued by another jurisdiction that has licensing or registration requirements that are substantially equivalent to the requirements for the license or registration in Texas. The statute requires the military spouse to comply with all other laws and regulations applicable to the business or occupation in Texas. The military spouse is authorized to engage in the business or occupation only for the period during which the military service member to whom the military spouse is married is stationed at a military installation in Texas but not to exceed three years from the date the spouse receives the requisite confirmation from the agency.

Most participants in the securities industry acting as investment advisers or investment adviser representatives are either registered or notice-filed and practice in multiple jurisdictions. Before they can engage in the securities business in Texas, the Texas

Securities Act generally requires investment advisers and their representatives to either register with the Agency or to notice file pursuant to §116.1(b)(2), by filing the applicable form and paying the application fee (in this preamble registrations and notice filings will be collectively referred to as "licenses"). Investment adviser firms that have a compliance department are unlikely to want to keep track of the unique Texas process that allows a military spouse to operate as a representative without being licensed. In light of this, and in keeping with the spirit of the bill, the proposed amendment would provide the option in paragraph (3) of new subsection (h) (Option 1) to allow military spouses to become licensed and receive a waiver or refund of the initial application and renewal fees for the period covered by §55.0041 in which they would not be required to be licensed to conduct activity in Texas.

The Investment Adviser Registration Depository (IARD) System is used by investment advisers and their representatives to process virtually all Texas investment adviser and representative licenses. Only applications and renewals with reportable disclosure items or deficiencies remain pending for more than a few days before registration is effective. It is therefore expected that most applications and renewals filed by military spouses choosing Option 1 will, similar to applications filed by other applicants, be processed almost immediately.

Since a military spouse choosing Option 1 (filing through the IARD System) would have to pay the application fee (initial or renewal) to use the electronic system, the amendment would provide for a refund to a military spouse who pays the fee. This would enable electronic filers to take advantage of the fee waiver authorized by statute. To avoid problems associated with processing stale claims, subsection (h) would provide that a refund request must be received within four years from the date the fee was collected or received. Current law and Board rules already provide for the waiver (or refund) of the initial application fee for military spouses. Accordingly, that procedure, provided under subsection (c) of §116.18, is referenced in the proposed amendment. A new form is being concurrently proposed to allow an eligible military spouse choosing this option to apply for a waiver or refund of a renewal fee in the second and third years of being licensed in Texas.

Eligible military spouses (or the firms that employ them) may also elect "Option 2." This option, set forth in paragraph (4) of new subsection (h), would track the requirements of the statute by requiring the military spouse to do the following before engaging in the practice of the securities business without first being licensed as an investment adviser or investment adviser representative in Texas: notify the Agency of the military spouse's intent to practice in Texas; submit to the Agency proof of the spouse's residency in Texas and a copy of the spouse's military identification card; and receive confirmation from the Agency that the Agency has verified the spouse's license in the other jurisdiction and authorized the spouse to engage in the specified activity in Texas without being licensed in Texas. A new form is being concurrently proposed for use by an eligible military spouse choosing this option to request and obtain recognition of out-of-state license or registration.

Additionally, since engaging in unlicensed activity can result in administrative, civil, or criminal action against the military spouse and/or the employing firm, the proposed amendment would impose a requirement on a military spouse choosing Option 2 (operating in Texas without an investment adviser or investment adviser representative license) to notify the Securities Commis-

sioner within 30 days if circumstances change and he or she is no longer eligible for §55.0041 treatment and immediately cease activity until such time as he or she becomes licensed in the appropriate capacity to conduct securities activity in Texas. This requirement is also noted in proposed new Form 133.23, Request for Recognition of Out-Of-State License or Registration by a Military Spouse, which is being concurrently proposed. Option 2 would, upon issuance of the confirmation by the Agency, be treated as a notice filing, subject to renewal on a calendar year basis, so continued eligibility of the military spouse can be reassessed annually.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division; have determined that for the first five-year period the proposed amendment is in effect there may be foreseeable fiscal implications as a result of enforcing or administering the proposed amendment on state, but not local, government.

The effect on state government for the first five-year period that the proposed amendment will be in effect is an estimated loss in revenue as a result of the up to two years of renewal fee waivers or refunds that would be granted to military spouses that remain in the state after their first year for the subsequent two one-year renewal periods. Although there would be a fiscal impact, it is the result of legislation rather than Agency rulemaking. The fiscal note to Senate Bill 1200 reflected that no significant fiscal implication to the State is anticipated. According to the Comptroller of Public Accounts (CPA), under current law, license application and examination fees are waived for military spouses who hold a current license issued by another jurisdiction with substantially equivalent license requirements, therefore the bill would have no revenue implications. The Agency did not receive any requests for refunds or waivers of initial application fees from military applicants or other requests under current §116.18 in fiscal years 2018 or 2017. Based on the absence of any such requests in the past two fiscal years, the anticipated fiscal impact is expected to be negligible.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to ease regulatory and financial burdens of certain military spouses, licensed in good standing as securities professionals in another state, who are relocating to Texas. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation. Although military spouses will be eligible for waivers or refunds

of renewal fees due to new Texas Occupations Code §55.0041 (which is an expansion of current law and Board rules that apply to initial applications only), the anticipated negative fiscal impact that may be caused by the elimination of renewal fees of military spouses is the direct result of the Legislature's adoption of new Texas Occupations Code §55.0041, rather than through the Agency's rulemaking to implement the legislative change.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-35.

§116.18. Special Provisions Relating to Military Applicants.

(a) - (g) (No change.)

(h) Recognition of out-of-state license or registration of a military spouse as authorized by Occupations Code, §55.0041.

(1) A military spouse may use the procedure set out in this subsection if he or she holds a current registration in another jurisdiction.

(2) The period covered by this subsection is only for the time during which the military service member to whom the military spouse is married is stationed at a military installation in Texas. This period may not exceed three years from the date the military spouse:

(A) first becomes registered, or makes a notice filing pursuant to §116.1(b)(2) of this chapter (relating to general provisions), in Texas under Option 1, set out in paragraph (3) of this subsection; or

(B) first receives the confirmation from the Registration Division under Option 2, set out in paragraph (4)(C)(ii) of this subsection.

(3) Option 1: registration in Texas, or a notice filing made pursuant to §116.1(b)(2) of this chapter, with waiver or refund of the initial filing fee and renewal fees. If the military spouse is registered or notice filed in Texas, for all or part of the period set out in paragraph (2) of this subsection, he or she may request a waiver or refund of a fee previously paid.

(A) The initial registration fee may be waived or refunded by following the procedure set out in subsection (c) of this section, including filing Form 133.19, Waiver or Refund Request by a Military Applicant.

(B) A renewal fee may be waived by submitting Form 133.22, Waiver or Refund Request by a Military Spouse for a Renewal Fee, at the time the renewal is submitted. A refund of a renewal fee that was paid in error, is requested by submitting Form 133.22 within four years from the date the fee was collected or received.

(4) Option 2: notification and authorization of activity without registration, or notice filing pursuant to §116.1(b)(2) of this chapter. Upon confirmation under subparagraph (C) or (D) of this paragraph, the military spouse will be considered to be notice filed in Texas. Such notice filing expires at the end of the calendar year.

(A) A military spouse may engage in activity without a license or registration under the authority of Occupations Code, §55.0041, and this paragraph, only for the period specified in paragraph (2) of this subsection.

(B) A military spouse who becomes ineligible under Occupations Code, §55.0041, or paragraph (1) or (2) of this subsection prior to the three year period identified in paragraph (2), must notify the Securities Commissioner of such ineligibility within 30 days and immediately cease activity until such time as he or she is registered in the appropriate capacity to conduct activity in Texas.

(C) Before engaging in an activity requiring registration in Texas, or a notice filing pursuant to §116.1(b)(2) of this chapter, in Texas, the military spouse must initially:

(i) provide notice of his or her intent to engage in activity in Texas and specify the type of activity by filing with the Securities Commissioner:

(I) Form 133.23, Request for Recognition of Out-Of-State License or Registration by a Military Spouse;

(II) proof of his or her residency in Texas; and

(III) a copy of his or her military identification card.

(ii) receive confirmation that the Registration Division:

(I) has verified the individual's license in another jurisdiction; and

(II) authorizes the individual to engage in the specified activity.

(D) To continue to conduct business without registration in Texas, or a notice filing pursuant to §116.1(b)(2) of this chapter, under Option 2, after the expiration of the initial confirmation under subparagraph (C)(ii), the military spouse must renew annually on the same schedule as renewals of registration. This enables the Registration Division to determine that the military spouse remains eligible under Occupations Code, Section 55.0041, to continue to conduct securities activities in Texas without being registered.

(i) A renewal is made by submitting the same documents identified in subparagraph (C)(i) of this paragraph.

(ii) A renewal is not effective until the military spouse receives confirmation that the Registration Division:

(I) has verified the individual's license in another jurisdiction; and

(II) authorizes the individual to engage in specified activity.

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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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



7 TAC §116.22

The Texas State Securities Board proposes new §116.22, concerning electronic submission of forms and fees. The new rule would implement a management recommendation of the Sunset Advisory Commission to allow investment adviser and investment adviser representative applicants the option to electronically submit supplemental, required documents (those not presently filed through the IARD System) with the Agency that are currently being submitted in paper format. Forms, payments, and fees currently required to be submitted through IARD will continue to be submitted through and maintained on that system.

Since these electronic filing processes are still being developed, the proposal specifically addresses applicants - the category specified in the Sunset recommendation. However, once staff has experience with the electronic submission system, the staff contemplates expanding it to cover other filings and fees. Subsection (c) in the proposal takes this future expansion into account.

Staff anticipates initially the electronic submission system will operate to permit an applicant to submit electronic copies of required documents as attachments through an email address dedicated solely for that purpose. A process using the Agency's email system, which automatically scans emails and attachments for viruses and malware, has already been implemented to accomplish this goal of the Sunset recommendation.

Clint Edgar, Deputy Securities Commissioner, and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that, for the first five-year period the proposed rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed rule. The Agency staff will administer the optional, electronic submission of forms portion of the rule by using existing resources. The portion of the proposed rule concerning optional online fee submissions would not currently impose a cost on the Agency or state government because, at this time, all investment advisers and investment adviser applicants are currently required to pay their fees online through IARD. If that changes in the future and the Agency implements an online payment system, there would be a cost to the Agency and state government, at this time, the cost cannot be ascertained.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed rule is in effect the public benefit expected as a result of adoption of the proposed rule will be to reduce the burden on applicants by providing them the option to submit additional, required documents electronically rather than in hard copy format and to reduce the burden on certain applicants in the future who would be required to pay fees directly to the Agency, by providing them with the option to pay fees electronically rather than mailing in checks.

Due to the choices provided in the proposed rule, which would give filers the options to submit required documents electronically or on paper, and which would give certain filers (that are not required to use IARD for fee payments) the option to pay online instead of by check, there will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed rule will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There is no anticipated economic cost to persons who are required to comply with the rule as proposed. At the present time, all investment adviser and investment adviser representative application and renewal fees are paid electronically through IARD, and under the proposal would continue to be paid that way. In the future, if there are investment adviser or investment adviser representative applicants who are not required to use IARD, they will have the option to submit their fees to the Agency electronically when an online payment system is implemented. Once an online payment system is implemented through Texas.gov, credit card payments submitted through that site will be required to pay an online processing fee (or convenience fee) in addition to the underlying state fee for the registration or service. This additional processing fee would be a cost incurred by each of the Agency's applicants who opt to pay a fee electronically, when that service is available. At the present time, it appears that the maximum online processing fee is \$5 for an annual occupational license. Comptroller's APS 029, updated 8/31/2018. Since the use of the online system to pay a fee electronically will be optional, there is no anticipated economic cost to the filers to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed rule is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed rule does not create a new regulation, or expand, limit or repeal an existing regulation. Although the proposal creates a new rule, there would be no new regulation created since the new rule only addresses the manner in which fees can be paid and filings can be made. The filings and fees affected by the proposal are ones that are already required by statute and current rules.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applica-

tions; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

§116.22. Electronic Submission of Forms and Fees.

(a) This section does not apply to forms or fees required by §116.2 of this chapter (relating to Application Requirements), to be submitted electronically through the IARD System or the CRD System.

(b) Documents and fees submitted by applicants for investment adviser and investment adviser representative registration or notice filing may, at the option of the filer, be submitted electronically to the Securities Commissioner.

(c) Filings made and fees paid by investment advisers or investment adviser representatives may be submitted electronically, as the Agency's system is developed to accept them.

(d) All electronic submissions of forms or fees must be made in accordance with the submission procedures set out on the Agency's website (www.ssb.texas.gov). Please check the Agency's website for a complete list of forms and fees that are currently being accepted electronically.

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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Travis J. Iles

Securities Commissioner

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For further information, please call: (512) 305-8303



CHAPTER 133. FORMS

7 TAC §§133.5, 133.6, 133.8, 133.12, 133.13, 133.16, 133.18, 133.26, 133.29, 133.30, 133.34 - 133.36

The Texas State Securities Board proposes the repeal of thirteen rules, concerning forms adopted by reference. These forms, which contain notarization and sworn under oath requirements, would be repealed to implement recommendations made by the Texas Sunset Advisory Commission to remove these requirements from the forms when the Texas Securities Act doesn't otherwise require the form to be sworn. New replacement forms that would be certified to be true and correct and to be signed under penalty of perjury are being currently proposed. Specifically, the State Securities Board proposes the repeal of §133.5, a form concerning Secondary Trading Exemption Notice; §133.6, a form concerning Secondary Trading Exemption Renewal Notice; §133.8, a form concerning Power of Attorney; §133.12, a form concerning Renewal Application for Mutual Funds and Other Continuous Offerings; §133.13, a form concerning Application for Renewal Permit; §133.16, a form concerning Texas Crowdfunding Portal Withdrawal of Registration; §133.18, a form concerning Certification of Balance Sheet by Principal Financial Officer; §133.26, a form concerning Request for Determination of Money Market Fund Status for Federal Covered Securities; §133.29, a form concerning Intrastate Exemption Notice; §133.30, a form concerning Information Concerning Projected

Market Prices and Related Market Information; §133.34, a form concerning Undertaking Regarding Non-Issuer Sales; §133.35, a form concerning Application for Designation as Matching Service under §109.15; and §133.36, a form concerning Request for Reduced Fees for Certain Persons Registered in Multiple Capacities.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the repeals are in effect, there will be no foreseeable fiscal implications for state or local government as a result of administering the repeals.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed repeals are in effect the public benefit expected as a result of adoption of the proposed repeals will be that forms that are no longer needed will be eliminated. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed repeals will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed repeals of the rules adopting by reference the forms are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rule's applicability; they do not positively or negatively affect the state's economy; and they do not create a new regulation, or expand, limit, or repeal an existing regulation. Although the rulemaking involves repealing existing forms, the net effect is to merely replace the forms with new forms that are being concurrently proposed, while leaving the scope and the content of the current regulations that relate to these forms unchanged.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed repeals in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The repeals are proposed under Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

The proposal affects Texas Civil Statutes, Articles 581-5, 581-7, 581-8, 581-12, 581-18, and 581-42.

§133.5. *Secondary Trading Exemption Notice.*

§133.6. *Secondary Trading Exemption Renewal Notice.*

§133.8. *Power of Attorney.*

§133.12. *Renewal Application for Mutual Funds and Other Continuous Offerings.*

§133.13. *Application for Renewal Permit.*

§133.16. *Texas Crowdfunding Portal Withdrawal of Registration.*

§133.18. *Certification of Balance Sheet by Principal Financial Officer.*

§133.26. *Request for Determination of Money Market Fund Status for Federal Covered Securities.*

§133.29. *Intrastate Exemption Notice.*

§133.30. *Information Concerning Projected Market Prices and Related Market Information.*

§133.34. *Undertaking Regarding Non-issuer Sales.*

§133.35. *Application for Designation as Matching Service under §109.15.*

§133.36. *Request for Reduced Fees for Certain Persons Registered in Multiple Capacities.*

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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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



7 TAC §§133.5, 133.6, 133.8, 133.12, 133.13, 133.16, 133.18, 133.26, 133.29, 133.30, 133.34 - 133.36

The Texas State Securities Board proposes thirteen new rules, concerning forms adopted by reference. Specifically, the State Securities Board proposes new §133.5, a form concerning Secondary Trading Exemption Notice; §133.6, a form concerning Secondary Trading Exemption Renewal Notice; §133.8, a form concerning Consent to Service; §133.12, a form concerning Renewal Application for Mutual Funds and Other Continuous Offerings; §133.13, a form concerning Application for Renewal Permit; §133.16, a form concerning Texas Crowdfunding Portal Withdrawal of Registration; §133.18, a form concerning Certification of Balance Sheet by Principal Financial Officer; §133.26, a form concerning Request for Determination of Money Market Fund Status for Federal Covered Securities; §133.29, a form concerning Intrastate Exemption Notice; §133.30, a form concerning Information Concerning Projected Market Prices and Related Market Information; §133.34, a form concerning Undertaking Regarding Non-Issuer Sales; §133.35, a form concerning Application for Designation as Matching Service under §109.15; and §133.36, a form concerning Request for Reduced Fees for Certain Persons Registered in Multiple Capacities.

The new sections would adopt by reference forms that are updated to remove notarization requirements to implement a recommendation made by the Texas Sunset Advisory Commission

to remove the requirement from the forms when the Texas Securities Act doesn't otherwise require the form to be sworn. Instead of being signed before a notary the new forms would be certified to be true and correct and would be signed under penalty of perjury. Other non-substantive changes would be made to sections and the forms, and the name of Form 133.8 would be changed to more accurately reflect the purpose of the form and to conform the terminology with that used in §8 of the Texas Securities Act. Existing forms §§133.5, 133.6, 133.8, 133.12, 133.13, 133.16, 133.18, 133.26, 133.29, 133.30, 133.34, 133.35, and 133.36 are being concurrently proposed for repeal.

Clint Edgar, Deputy Securities Commissioner; Tommy Green, Director, Inspections and Compliance Division; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed forms are used there will be no foreseeable fiscal implications for state or local government as a result of using the proposed forms.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed forms are used the public benefit expected as a result of adoption of the proposed forms will be to provide more efficiency in the filing of forms with the Board by removing unnecessary administrative burdens. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed forms will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to use the forms as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Mr. Green, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed rules adopting by reference the forms are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rule's applicability; they do not positively or negatively affect the state's economy; and they do not create a new regulation, or expand, limit or repeal an existing regulation. Although the rulemaking involves the creation of new forms, there would be no new regulation created since the net effect is to merely replace forms that are being concurrently proposed for repeal, while leaving the scope and the content of the current regulations that relate to these forms unchanged.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rules are proposed under Texas Civil Statutes, Articles 581-28-1 and 581-42.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and

matters within its jurisdiction; and prescribing different requirements for different classes. Section 42.B provides the Board with the authority to adopt rules reducing fees for persons registered in two or more capacities.

The proposal affects Texas Civil Statutes, Articles 581-5, 581-7, 581-8, 581-12, 581-18, and 581-42.

§133.5. Secondary Trading Exemption Notice.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.6. Secondary Trading Exemption Renewal Notice.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.8. Consent to Service.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.12. Renewal Application for Mutual Funds and Other Continuous Offerings.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.13. Application for Renewal Permit.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.16. Texas Crowdfunding Portal Withdrawal of Registration.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.18. Certification of Balance Sheet by Principal Financial Officer.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.26. Request for Determination of Money Market Fund Status for Federal Covered Securities.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.29. Intrastate Exemption Notice.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.30. Information Concerning Projected Market Prices and Related Market Information.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.34. Undertaking Regarding Non-issuer Sales.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.35. Application for Designation as Matching Service under §109.15.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.36. Request for Reduced Fees for Certain Persons Registered in Multiple Capacities.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

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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Travis J. Iles
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For further information, please call: (512) 305-8303



7 TAC §133.22, §133.23

The Texas State Securities Board proposes new §133.22, a form concerning Waiver or Refund Request by a Military Spouse for a Renewal Fee, and new §133.23, a form concerning Request for Recognition of Out-Of-State License or Registration by a Military Spouse. The new sections would adopt by reference forms that are created to implement proposed amendments to §115.18 and §116.18, which are concurrently proposed for adoption to implement the requirements of Senate Bill 1200, passed in the 2019 Texas Legislative Session, which added §55.0041 to the Texas Occupations Code.

New Form 133.22 would allow a military spouse falling within the provisions of Texas Occupations Code §55.0041 to apply for a waiver or refund of a renewal fee pursuant to proposed amendments to §115.18 or §116.18, which are being concurrently amended.

New Form 133.23 would be filed by a military spouse eligible for non-registration under Occupations Code §55.0041, to provide the Agency with information needed to determine eligibility for such treatment. The form would need to be resubmitted annually during the period that the military spouse qualifies for unique treatment under Texas Occupations Code §55.0041. Upon issuance of the confirmation by the Registration Division for the initial or a renewal filing, the military spouse would be considered to be notice filed for purposes of recordkeeping and certification.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed forms are used there will be no foreseeable fiscal implications for state or local government as a result of using the proposed forms.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed forms are used the public benefit expected as a result of adoption of the proposed forms will be that an eligible military spouse can complete the forms to either obtain a waiver or refund of renewal fees or to practice securities business in Texas without being registered. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed forms will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to use the forms as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed rules adopting by reference the forms are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid

to this agency; they do not increase or decrease the number of individuals subject to the rule's applicability; they do not positively or negatively affect the state's economy; and they do not create a new regulation, or expand, limit or repeal an existing regulation. Although the rulemaking involves the creation of new forms, the forms are created as part of the implementation of Senate Bill 1200.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rules are proposed under Texas Civil Statutes, Article 581-28-1 and §55.0041 of the Texas Occupations Code. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 55.0041 of the Texas Occupations Code requires a state agency that issues a license to adopt rules to implement §55.0041 and authorizes a state agency to adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under subsection (b)(3) of §55.0041.

The proposal affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, 581-18, and 581-35.

§133.22. Waiver or Refund Request by a Military Spouse for a Renewal Fee.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

§133.23. Request for Recognition of Out-Of-State License or Registration by a Military Spouse.

This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 and at www.ssb.texas.gov.

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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7 TAC §133.33

The Texas State Securities Board proposes an amendment to §133.33, concerning uniform forms accepted, required, or recommended. Section 133.33 would be amended to specifically address federal covered securities offered pursuant to SEC Regulation A, Tier II ("Regulation A+") by adding the Uniform Notice

Filing of Regulation A - Tier 2 form to the list of uniform forms accepted. This form is used for making the required notice filings for this type of federal covered securities. A related change to §114.4 has been concurrently proposed for adoption.

Clint Edgar, Deputy Securities Commissioner; and Emily Diaz and Shaun Yarroll, Assistant Directors, Registration Division, have determined that for the first five-year period the proposed amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for each year of the first five years the proposed amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be to provide for more efficiency for Regulation A+ filings by permitting Regulation A+ filers to use a different form for these filings. There will be no adverse economic effect on micro- or small businesses or rural communities. Since the proposed amendment will have no adverse economic effect on micro- or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Mr. Edgar, Ms. Diaz, and Mr. Yarroll have also determined that for the first five-year period the proposed amendment is in effect: it does not create or eliminate a government program; it does not require the creation or elimination of existing employee positions; it does not require an increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to this agency; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or negatively affect the state's economy. Additionally, the proposed amendment does not create a new regulation, or expand, limit, or repeal an existing regulation.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed section in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposal affects Texas Civil Statutes, Article 581-5.

§133.33. *Uniform Forms Accepted, Required, or Recommended.*

(a) Assuming the appropriate exhibits and supplements are filed, the State Securities Board will accept for filing the following "Uniform Forms" in lieu of the requisite Texas form, if any.

(1) - (11) (No change.)

(12) Regulation A - Tier 2 form.

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

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

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Travis J. Iles

Securities Commissioner

State Securities Board

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For further information, please call: (512) 305-8303



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 Texas Administrative Code, Chapter 80, §§80.2, 80.21, 80.41, 80.73, and add new 80.95, relating to the regulation of the manufactured housing program. The rules are revised to comply with House Bill 2315 (86th Legislature, 2019 regular session) that amends the Manufactured Housing Standards Act and for clarification purposes.

10 Texas Administrative Code §80.2(26) was added to define a serious violation. Section 1201.605(c)(1) of the Texas Occupations Code allows the Department to use the seriousness of a violation to help determine the proper penalty amount. However, the term "seriousness of a violation" is vague. A definition will assist to determine how and when the department should consider a violation as serious when determining the penalty.

10 Texas Administrative Code §80.21(h) was amended to remove the rental community exception for drainage site preparation. The installer is responsible for proper site drainage where a new manufactured home is installed, pursuant to 24 CFR §3285.203. The Code of Federal Regulation does not allow an exception for rental communities. The Code of Federal Regulation does not apply to the installation of used manufactured homes.

10 Texas Administrative Code §80.41(g)(1)(B), (2)(D), (3)(D) were amended to clarify the exemption for retailer's licenses. The Department wanted to clarify that this exemption only applies to the sale of up to three manufactured homes within a twelve (12) month period to ensure it was consistent with the statutory authority found in §1201.1025 of the Texas Occupations Code. Clarification was also needed to demonstrate the homes may not be sold until the letter of exemption is granted.

10 Texas Administrative Code §80.73(b)(3) was amended to clarify the timeline for conducting a proper warranty inspection. Pursuant to §1201.355 of the Texas Occupations Code, if a proper warranty service is not provided, and an inspection is requested the Department has thirty (30) days to conduct an inspection from the date the request is made. When a complaint is received it may not be a valid complaint within the Department's jurisdiction. It must be determined that a proper

warranty service was not provided within the warranty deadline. The thirty (30) day deadline to conduct an inspection should begin after the complaint is validated, to ensure Department's resources are not wasted on inspections that are not within the Department's jurisdiction.

New 10 Texas Administrative Code §80.95 was added to implement House Bill 2315 introduced during the 86th Texas Legislative Session. House Bill 2315, adopted in the 86th Texas Legislative Session, required the Department to adopt rules for the application for an automatic issuance of a Statement of Ownership for a federal governmental agency providing temporary housing in response to a natural disaster or other declared emergency. The addition of §1201.2071 of the Texas Occupations Code, Exemption for Certain Emergency Housing, will take effect September 1, 2019.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small businesses, micro-businesses, or rural communities because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules benefit the public by providing clarification of procedures in order to comply with the Manufactured Housing Standards Act.

Mr. Garcia has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Mr. Garcia has also determined that for each of the first five years the proposed rules are in effect, the proposed rules would not have a large government growth impact. The proposed rules do not create or eliminate a government program. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule does not require the increase or decrease in future legislative appropriations to the agency. The proposed rules do not require an increase or decrease in fees paid to the agency. The proposed rules do not create a new regulation. The proposed rules do not expand, limit, or repeal an existing regulation. The proposed rules do not increase or decrease the number of individuals subject to the rules applicability. The proposed rules do not positively or adversely affect this state's economy. This statement is made pursuant to the Administrative Procedures Act, Texas Government Code, §2001.0221.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at mhproposedrulecomments@tdhca.state.tx.us. The deadline for comments is no later

than 30 days from the date that these proposed rules are published in the *Texas Register*.

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

10 TAC §80.2

The amendments are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.2. *Definitions.*

Terms used herein that are defined in the Code and the Standards Act have the meanings ascribed to them therein. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (25) (No change.)

(26) Seriousness of Violation--Pursuant to Section 1201.605(c)(1) of the Texas Occupations Code, the Department shall assess a higher administrative penalty if the consumer harm or burden is great as a result of the violation.

(27) [(26)] Stabilization systems--A combination of the anchoring and support system. It includes, but is not limited to the following components:

(A) - (K) (No change.)

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

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TRD-201902868

Joe A. Garcia

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: October 6, 2019

For further information, please call: (512) 475-2206



SUBCHAPTER B. INSTALLATION STANDARDS AND DEVICE APPROVALS

10 TAC §80.21

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department, and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.21. *Requirements for the Installation of Manufactured Homes.*

(a) - (g) (No change.)

(h) Drainage: The Installer is responsible for proper site drainage where a new manufactured home is to be installed [~~unless the home is installed in a rental community~~]. The consumer is responsible for proper site drainage where a used manufactured home is to be installed unless the home is installed in a rental community. Drainage prevents water build-up under the home. Water build-up may cause shifting or settling of the foundation, dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors.

(i) - (j) (No change.)

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

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TRD-201902869

Joe A. Garcia

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: October 6, 2019

For further information, please call: (512) 475-2206



SUBCHAPTER D. LICENSING

10 TAC §80.41

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.41. *License Requirements.*

(a) - (f) (No change.)

(g) Exemption for Retailer's License Requirement.

(1) Application for Exemption of Retailer's License Requirement.

(A) A person requesting exemption from the Retailer's licensing requirement of §1201.101(b) of the Occupations Code, shall submit the required application outlining the circumstances under which they are requesting exemption from licensure.

(B) Applications should identify the HUD label or serial number(s) of up to three (3) [~~the~~] homes being sold under the exemption;

(C) Applications will be processed within seven (7) business days after receipt of all required information.

(2) The circumstances under which this exemption is granted are:

(A) One-time sale of up to three (3) manufactured homes in a 12-month period as personal property;

(B) Non-profit entity transferring ownership of up to three (3) manufactured homes in a 12-month period; and/or

(C) No other manufactured homes have been purchased and resold in the previous twelve (12) months, even with a previous exemption; [~~and/or~~]

~~[(D) Other circumstances deemed appropriate by the Executive Director.]~~

(3) Letter of Exemption.

(A) Once granted, a Letter of Exemption from licensure will be issued by the Executive Director to the applicant.

(B) Letter of Exemption is valid only for the manufactured home(s) specified.

(C) Letter of Exemption is valid only for twelve (12) months.

(D) The homes may not be sold until the Letter of Exemption is granted.

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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Joe A. Garcia

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-2206



SUBCHAPTER E. ENFORCEMENT

10 TAC §80.73

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department, and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.73. *Procedures for Handling Consumer Complaints.*

(a) (No change.)

(b) The Department shall make a consumer complaint home inspection upon request.

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

(3) All complaints transferred to the field shall be inspected within 30 calendar days from the date the verified complaint was received. A complaint is deemed verified once it is established that the Department has jurisdiction over the matter. [The Department will perform the inspection within thirty (30) calendar days from the date an inspection is requested.]

(A) The consumer, manufacturer, retailer, and installer, as applicable, shall be notified of the scheduled inspection.

(B) The person conducting the inspection shall inspect all matters (relating to the home and/or the installation of the home) set forth in the complaint and any other items raised at the inspection.

(C) The person conducting the inspection will issue a report of inspection, completed to reflect the findings of the inspection.

(c) - (i) (No change.)

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

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SUBCHAPTER G. STATEMENTS OF OWNERSHIP

10 TAC §80.95

The new section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department, and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.95. Recording Ownership for Emergency Housing.

(a) A federal government agency that purchases a manufactured home to provide temporary housing in response to a natural disaster or other declared emergency may apply for a statement of ownership using the Statement of Ownership Application for Federal Governmental Agency.

(b) The Department may also accept a Certificate to Obtain Title signed by the federal government agency or their authorized representative in lieu of the Statement of Ownership Application for Federal Governmental Agency.

(c) The Department shall apply priority and special handling when an application for emergency housing in conjunction with a natural disaster or declared emergency, is received.

(d) The Department may waive or refund any fees for emergency housing affiliated with a governor's executive order or proclamation that declares a state of disaster under Chapter 418 of the Government Code in the affected area.

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 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 160. MEDICAL PHYSICISTS

22 TAC §160.31

The Texas Medical Board (Board) proposes new rule §160.31 concerning Exemption from Licensure for Certain Military Spouses for medical physicists.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §160.31, Exemption from Licensure for Certain Military Spouses regarding medical physicists, allows qualified military spouses to practice medical physics without obtaining a medical physicist license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rule as proposed is in effect, the public benefit anticipated as a result of enforcing this proposed new rule will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period this new rule as proposed is in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rule as proposed.

Mr. Freshour has also determined that for the first five-year period the new rule is in effect there will be no probable economic cost to individuals required to comply with this rule as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rule and determined that for each year of the first five years the proposed new rule will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed new rule and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years this new rule as proposed is in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

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

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

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

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

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

(5) The proposed rule creates new regulations.

(6) The proposed rule does not repeal existing regulations as described above. The proposed rule does not expand or limit an existing regulation.

(7) The proposed rule increases the number of individuals subject to the rule's applicability.

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

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act, and to adopt rules necessary to regulate medical physicists. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section.

No other statutes, articles or codes are affected by this proposal.

§160.31. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to practice medical physics in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is

married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active medical physicist license in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the advisory committee to be substantially equivalent to the requirements for certification in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the advisory committee of the military spouse's intent to practice in Texas on a form prescribed by the advisory committee; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice medical physics in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of medical physics in Texas.

(d) Once the advisory committee receives the form containing notice of a military spouse's intent to practice in Texas, the advisory committee will verify whether the military spouse's medical physicist license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the advisory committee will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 163. LICENSURE

22 TAC §163.3

The Texas Medical Board (Board) proposes new rule §163.3, concerning Exemption from Licensure for Certain Military Spouses, for physicians.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses who are physicians.

New rule §163.3. Exemption from Licensure for Certain Military Spouses regarding Physicians, allows qualified military spouses to practice medicine without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by

the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rule as proposed is in effect, the public benefit anticipated as a result of enforcing these proposed new rules will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period these new rule as proposed is in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rules as proposed.

Mr. Freshour has also determined that for the first five-year period the new rule is in effect there will be no probable economic cost to individuals required to comply with these rules as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rule and determined that for each year of the first five years the proposed new rule will be in effect:

- (1) there will be no effect on small businesses, micro businesses, or rural communities; and
- (2) the agency has considered alternative methods of achieving the purpose of the proposed new rules and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these new rules as proposed are in effect:

- (1) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is *none*;
- (2) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule is *none*;
- (3) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is *none*; and
- (4) there are *no* foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

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

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

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

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

(5) The proposed rule creates new regulations.

(6) The proposed rule does not repeal existing regulations as described above. The proposed rules do not expand or limit an existing regulation.

(7) The proposed rule does increase the number of individuals subject to the rules' applicability.

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

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act, and to adopt rules necessary to regulate physicians. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section. No other statutes, articles or codes are affected by this proposal.

§163.3. Exemption from Licensure for Certain Military Spouses.

(a) The executive director must authorize a qualified military spouse to engage in the practice of medicine in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active medical license in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for licensure in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation; and

(2) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions); and

(3) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board.

(c) While authorized to practice medicine in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of medicine in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board will verify whether the military spouse's license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing requirements in that ju-

isdiction are substantially equivalent to the requirements for licensure in Texas.

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

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Scott Freshour

General Counsel

Texas Medical Board

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CHAPTER 165. MEDICAL RECORDS

22 TAC §165.1

The Texas Medical Board (Board) proposes an amendment to 22 TAC §165.1, relating to Medical Records.

The amendment to §165.1 adds a requirement that physicians must retain forensic medical examination records of a sexual assault victim for 20 years from the date of examination. This change is in accordance with and pursuant to the passage of HB531 (86th Reg. Session) which amended Section 153.003 of the Texas Occupations Code.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing this proposal will be to have rules that comply with statutory mandates.

Mr. Freshour has determined that, for the first five-year period this rule is in effect, there will be no effect to individuals required to comply with this rule as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments, and has determined that for each year of the first five years the proposed amendment will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendment and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that, for each year of the first five years this rule amendment, as proposed, is in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule;
- (2) there are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;
- (3) there are no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

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 amendment will be in effect, Mr. Freshour has determined the following:

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

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, 153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§165.1. Medical Records.

(a) Contents of Medical Record. Regardless of the medium utilized, each licensed physician of the board shall maintain an adequate medical record for each patient that is complete, contemporaneous and legible. For purposes of this section, an "adequate medical record" should meet the following standards:

- (1) The documentation of each patient encounter should include:
 - (A) reason for the encounter and relevant history, physical examination findings and prior diagnostic test results;
 - (B) an assessment, clinical impression, or diagnosis;
 - (C) plan for care (including discharge plan if appropriate); and
 - (D) the date and legible identity of the observer.
- (2) Past and present diagnoses should be accessible to the treating and/or consulting physician.
- (3) The rationale for and results of diagnostic and other ancillary services should be included in the medical record.

(4) The patient's progress, including response to treatment, change in diagnosis, and patient's non-compliance should be documented.

(5) Relevant risk factors should be identified.

(6) The written plan for care should include when appropriate:

(A) treatments and medications (prescriptions and samples) specifying amount, frequency, number of refills, and dosage;

(B) any referrals and consultations;

(C) patient/family education; and,

(D) specific instructions for follow up.

(7) Include any written consents for treatment or surgery requested from the patient/family by the physician.

(8) Include a summary or documentation memorializing communications transmitted or received by the physician about which a medical decision is made regarding the patient.

(9) Billing codes, including CPT and ICD-9-CM codes, reported on health insurance claim forms or billing statements should be supported by the documentation in the medical record.

(10) All non-biographical populated fields, contained in a patient's electronic medical record, must contain accurate data and information pertaining to the patient based on actual findings, assessments, evaluations, diagnostics or assessments as documented by the physician.

(11) Any amendment, supplementation, change, or correction in a medical record not made contemporaneously with the act or observation shall be noted by indicating the time and date of the amendment, supplementation, change, or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

(12) Salient records received from another physician or health care provider involved in the care or treatment of the patient shall be maintained as part of the patient's medical records.

(13) The board acknowledges that the nature and amount of physician work and documentation varies by type of services, place of service and the patient's status. Paragraphs (1) - (12) of this subsection may be modified to account for these variable circumstances in providing medical care.

(b) Maintenance of Medical Records.

(1) A licensed physician shall maintain adequate medical records of a patient for a minimum of seven years from the anniversary date of the date of last treatment by the physician.

(2) If a patient was younger than 18 years of age when last treated by the physician, the medical records of the patient shall be maintained by the physician until the patient reaches age 21 or for seven years from the date of last treatment, whichever is longer.

(3) A licensed physician who conducts a forensic medical examination of a sexual assault victim shall maintain the medical records for 20 years from the date of the examination.

(4) [(3)] A physician may destroy medical records that relate to any civil, criminal or administrative proceeding only if the physician knows the proceeding has been finally resolved.

(5) [(4)] Physicians shall retain medical records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(6) [(5)] Physicians may transfer ownership of records to another licensed physician or group of physicians only if the physician provides notice consistent with §165.5 of this chapter (relating to Transfer and Disposal of Medical Records) and the physician who assumes ownership of the records maintains the records consistent with this chapter.

(7) [(6)] Medical records may be owned by a physician's employer, to include group practices, professional associations, and non-profit health organizations, provided records are maintained by these entities consistent with this chapter.

(8) [(7)] Destruction of medical records shall be done in a manner that ensures continued confidentiality.

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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CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER D. DISASTER EMERGENCY RULE

22 TAC §172.21

The Texas Medical Board (Board) proposes an amendment to Subchapter D, Disaster Emergency Rule §172.21.

Section 172.21, relating to Other Health Care Providers Practice and Limited License for Disasters and Emergencies, is amended to include Advance Practice Nurses (APRN) as being exempt from the requirement for a written Prescriptive Authority Agreement during a disaster, as the APRNs were inadvertently omitted from the rule when it was initially adopted. The inclusion of APRNs is consistent with the practice in previous disasters.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the subsection as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are consistent with other rules and statutes pertaining to disaster or emergency as defined under the rule.

Mr. Freshour has determined that for the first five-year period this rule is in effect, there will be no effect to individuals required to comply with these rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments, and has determined that for each year of the first five years the proposed amendments will be in effect, there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these rule amendments, as proposed, are in effect:

- (1) there is no additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

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 amendment will be in effect, Mr. Freshour has determined the following:

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

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed 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.

No other statutes, articles or codes are affected by this proposal.

§172.21. Other Health Care Providers Practice and Limited License for Disasters and Emergencies.

(a) For out of state licensees, permit holders, and certificate holders, other than physicians, who practice in health care areas subject to regulation by the Board, the process for obtaining authority to practice in Texas during a disaster or emergency is set out in §172.20(b)(1) and (2), relating to Physician Practice and Limited License for Dis-

asters and Emergencies, including all verification and reporting requirements.

(b) In addition, the following is applicable to these health care providers:

(1) the health care provider must practice under the supervision and delegation of a physician and the supervising physician must be licensed and practicing in Texas prior to the date of the disaster or emergency declaration and without restrictions on ability to supervise or delegate;

(2) except as specified in (c) below, the provisions related to supervision and delegation under §157.001, Texas Occupations Code, apply to both the health care provider and supervising physician; and

(3) the health care provider must also comply with all provisions of the applicable Texas Occupations Code for that occupation.

(c) Physician assistants, advanced practice registered nurses and Texas supervising physicians practicing under this section are not required to maintain onsite documentation describing supervisory arrangements and instructions for prescriptive authority as otherwise required by Chapter 157, Texas Occupations Code.

(d) The Board shall have jurisdiction over licensees, permit holders, and certificate holders practicing under this subchapter for all purposes set forth in or related to the Texas Occupations Code, and all other applicable state and federal laws, and such jurisdiction shall continue in effect even after the licensee, permit holder, or certificate holder have stopped practicing under this section related to providing medical services in Texas during the disaster.

(e) The authority to practice issued to a licensee, permit holder, or certificate holder under this subchapter shall be valid for no more than thirty (30) days from the date the licensee, permit holder, or certificate holder is authorized to practice or until the emergency or disaster declaration has been withdrawn or ended, whichever is longer.

(f) A licensee, permit holder, and certificate holder holding limited emergency authority under this subchapter shall not receive any compensation outside of their usual compensation for the provision of medical services during a disaster or emergency.

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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Scott Freshour

General Counsel

Texas Medical Board

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CHAPTER 183. ACUPUNCTURE

22 TAC §183.27

The Texas Medical Board (Board) proposes new rule 183.27, concerning Exemption from Licensure for Certain Military Spouses, for acupuncturists.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §183.27, Exemption from Licensure for Certain Military Spouses regarding acupuncturists, allows qualified military spouses to practice acupuncture without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rule as proposed is in effect, the public benefit anticipated as a result of enforcing the proposed new rule will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period this new rule as proposed is in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rule as proposed.

Mr. Freshour has also determined that for the first five-year period the new rule is in effect there will be no probable economic cost to individuals required to comply with this rule as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rule and determined that for each year of the first five years the proposed new rule will be in effect:

- (1) there will be no effect on small businesses, micro businesses, or rural communities; and
- (2) the agency has considered alternative methods of achieving the purpose of the proposed new rule and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years this new rule as proposed is in effect:

- (1) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is none;
- (2) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule is none;
- (3) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is none; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

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

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

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate acupuncturists. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section.

No other statutes, articles or codes are affected by this proposal.

§183.27. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to engage in the practice of acupuncture in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active acupuncture license in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for licensure in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation; and

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice acupuncture in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of acupuncture in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board will verify whether the military spouse's license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.33

The Texas Medical Board (Board) proposes new rule §185.33, concerning Exemption from Licensure for Certain Military Spouses, for physician assistants.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §185.33, Exemption from Licensure for Certain Military Spouses, allows qualified military spouses to practice as a physician assistant without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rule as proposed is in effect, the public benefit anticipated as a result of enforcing the proposed new rule will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period the new rule as proposed is in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rule.

Mr. Freshour has also determined that for the first five-year period the new rule is in effect there will be no probable economic cost to individuals required to comply with this rule as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rule and determined that for each year of the first five years the proposed new rule will be in effect:

(1) there will be no effect on small businesses, micro businesses, or rural communities; and

(2) the agency has considered alternative methods of achieving the purpose of the proposed new rule and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years the new rule as proposed is in effect:

(1) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is none;

(2) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule is none;

(3) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is none; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule. Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

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

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

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

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

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

(5) The proposed rule creates new regulations.

(6) The proposed rule does not repeal existing regulations as described above. The proposed rule does not expand or limit an existing regulation.

(7) The proposed rule does increase the number of individuals subject to the rule's applicability.

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

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and to adopt rules necessary to regulate physician assistants. The new rule is also proposed under Texas Occupa-

tions Code §55.0041, which mandates the Board to adopt rules to implement that section.

No other statutes, articles or codes are affected by this proposal.

§185.33. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to practice as a Physician Assistant in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active physician assistant license in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the board to be substantially equivalent to the requirements for licensure in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation; and

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice as a physician assistant in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice as a physician assistant in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board will verify whether the military spouse's license in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 186. RESPIRATORY CARE PRACTITIONERS

22 TAC §186.30

The Texas Medical Board (Board) proposes new rule §186.30 concerning Exemption from Licensure for Certain Military Spouses for respiratory care practitioners.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §186.30, Exemption from Licensure for Certain Military Spouses regarding respiratory care practitioners, allows qualified military spouses to practice as a respiratory care practitioner without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rules as proposed are in effect, the public benefit anticipated as a result of enforcing these proposed new rules will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period these new rules as proposed are in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rules as proposed.

Mr. Freshour has also determined that for the first five-year period the new rules are in effect there will be no probable economic cost to individuals required to comply with these rules as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rules and determined that for each year of the first five years the proposed new rules will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed new rules and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these new rules as proposed are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule;

(3) there are no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(4) there are *no* foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed new rule. For each year of the first five years the proposed

new rules will be in effect, Mr. Freshour has determined the following:

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

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and adopt rules necessary to regulate respiratory care practitioners. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section. No other statutes, articles or codes are affected by this proposal.

§186.30. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to practice as a respiratory care practitioner in Texas without obtaining a certificate in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active respiratory care practitioner certificate or permit in another state, territory, Canadian province, or country that:

(A) has licensing or certification requirements that are determined by the advisory board to be substantially equivalent to the requirements for certification in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the advisory board of the military spouse's intent to practice in Texas on a form prescribed by the advisory board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice respiratory care in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of respiratory care in Texas.

(d) Once the advisory board receives the form containing notice of a military spouse's intent to practice in Texas, the advisory board will verify whether the military spouse's certificate or permit in another state, territory, Canadian province, or country is active and in good standing. Additionally, the advisory board will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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

Filed with the Office of the Secretary of State on August 21, 2019.

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 188. PERFUSIONISTS

22 TAC §188.30

The Texas Medical Board (Board) proposes new rule §188.30 concerning Exemption from Licensure for Certain Military Spouses for perfusionists.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §188.30, Exemption from Licensure for Certain Military Spouses regarding perfusionists, allows qualified military spouses to practice as a perfusionist without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rules as proposed are in effect, the public benefit anticipated as a result of enforcing these proposed new rules will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period these new rules as proposed are in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rules as proposed.

Mr. Freshour has also determined that for the first five-year period the new rules are in effect there will be no probable economic cost to individuals required to comply with these rules as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rules and determined that for each year of the first five years the proposed new rules will be in effect there will be no

effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed new rule and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these new rules as proposed are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rule;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rule;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

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

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

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

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

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

(5) The proposed rule creates new regulations.

(6) The proposed rule does not repeal existing regulations as described above. The proposed rules do not expand or limit an existing regulation.

(7) The proposed rule does increase the number of individuals subject to the rules' applicability.

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

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical

Practice Act and to adopt rules necessary to regulate perfusionists. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section.

No other statutes, articles or codes are affected by this proposal.

§188.30. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to practice perfusion in Texas without obtaining a license in accordance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but is not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active perfusion certificate or permit in another state, territory, Canadian province, or country that:

(A) has licensing requirements that are determined by the advisory committee to be substantially equivalent to the requirements for certification in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the advisory committee of the military spouse's intent to practice in Texas on a form prescribed by the advisory committee; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by § 437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice perfusion in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of perfusion in Texas.

(d) Once the advisory committee receives the form containing notice of a military spouse's intent to practice in Texas, the advisory committee will verify whether the military spouse's certificate or permit in another state, territory, Canadian province, or country is active and in good standing. Additionally, the advisory committee will determine whether the licensing requirements in that jurisdiction are substantially equivalent to the requirements for licensure in Texas.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016

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CHAPTER 194. MEDICAL RADIOLOGIC
TECHNOLOGY

SUBCHAPTER A. CERTIFICATE HOLDERS, NON-CERTIFIED TECHNICIANS, AND OTHER AUTHORIZED INDIVIDUALS OR ENTITIES

22 TAC §§194.2, 194.6, 194.7, 194.10, 194.21

The Texas Medical Board (Board) proposes amendments to Chapter 194, Medical Radiologic Technology, 22 TAC §§194.2, 194.6, 194.7, 194.10, and 194.21.

Amendments are proposed to Chapter 194 setting forth certification process and requirements related to a new radiologist assistant certificate type, in accordance with House Bill 1504 (86th Regular Session); repealing language mandating the denial of an application for renewal of a certificate or NCT registration upon notice of a Texas Guaranteed Student Loan Corporation guaranteed student loan, in accordance with Senate Bill 37 (86th Regular Session); deleting references to the NCT "general" registry, a distinction no longer required after the passage of SB 674 (85th Regular Session); and making minor wording and re-formatting changes. Specifically:

Section 194.2, relating to Definitions, is amended with new definitions for "Certification Board for Radiology Practitioner Assistants", "radiologist", and "radiologist assistant."

Section 194.6, relating to Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician General Registry, contains proposed new language establishing eligibility requirements that must be met in order for an applicant to obtain a temporary or regular radiologist assistant certificate, pursuant to HB 1504. Other proposed amendments delete references to the NCT "general" registry, a distinction no longer required after the passage of SB 674 (85th Regular Session), which eliminated the NCT secondary registry with the Texas Medical Board. Finally, proposed amendments represent changes necessitated by the new language to maintain consistency and clarity throughout the section.

Section 194.7, relating to Biennial Renewal of Certificate or Placement on the Board's General Registry for Non-Certified Technicians Generally, contains proposed new language establishing continuing education requirements that must be met in order for a radiologist assistant certificate holder to renew a certificate, in accordance with HB 1504.

Proposed amendments are further added to clarify that certificate holders and NCTs are required to "complete activities" meeting the RCEEM or RCEEM+ designation, as opposed to "attendance and participation in formal activities", reflecting that web-based courses are formats that comply with the continuing education requirements.

Language mandating the denial of an application for renewal of a certificate or NCT registration upon notice of a Texas Guaranteed Student Loan Corporation guaranteed student loan is proposed for repeal, in accordance with SB 37 (86th Regular Session).

Other proposed amendments delete references to the NCT "general" registry, a distinction no longer required after the passage of SB 674 (85th Regular Session), which eliminated the NCT secondary registry with the Texas Medical Board. Remaining amendments represent changes necessitated by the new language related to radiologist assistant certificates, to maintain consistency and clarity throughout the section.

Section 194.10, relating to Retired Certificate or NCT General Registration Permit, is amended so that references to the NCT "general" registry are eliminated throughout, a distinction no longer required after the passage of SB 674 (85th Regular Session). Language is added with a reference to the Certification Board for Radiology Practitioner Assistants (CBRPA) related to possible certification renewal requirements for a radiologist assistant with a retired certificate, who desires to return to active practice and who had initially obtained eligibility for a Texas certificate through CBRPA national certification. The proposed language reflects the new radiologist assistant eligibility requirements established by HB 1504 (86th Regular Session).

Section 194.21, relating to Scope of Practice, includes proposed changes to more precisely outline the allowed scope of practice for an individual holding a limited certificate.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules implementing and defining the requirements set forth by HB 1504 and SB 37 (86th Regular Session) and SB 674 (85th Regular Session), related to the new radiologist assistant certificate type and elimination of NCT secondary registry. The public will also benefit from having rules that contain language accurately reflecting current laws and board processes.

Mr. Freshour has determined that for the first five-year period these rules are in effect, there will be no effect to individuals required to comply with these rules as proposed. There will be no effect on small businesses, micro businesses, or rural communities.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed rule amendments, and has determined that for each year of the first five years the proposed amendments will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed rule amendments and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that the agency has determined that for each year of the first five years these rule amendments, as proposed, are in effect:

- (1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the rules;
- (2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the rules;
- (3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rules; and
- (4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rules.

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 amendments will be in effect, Mr. Freshour 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 create new regulations.
- (6) The proposed rules do not limit nor expand, but do repeal existing regulations as described above.
- (7) The proposed rules increase the number of individuals subject to the rules' applicability.
- (8) The proposed rules do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed 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 amendments are also proposed under the authority of HB 1504 (86th R.S.), SB 37 (86th R.S.), and SB 674 (85th R.S.).

No other statutes, articles or codes are affected by this proposal.

§194.2. Definitions.

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

- (1) ABHES--Accrediting Bureau of Health Education Schools.
- (2) Act--The Medical Radiologic Technologist Certification Act, Texas Occupations Code, Chapter 601.
- (3) Active duty--A person who is currently serving as full-time military service member in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.
- (4) Agency--The divisions, departments, and employees of the board, Texas Medical Board, Texas Physician Assistant Board, Texas State Board of Acupuncture Examiners, Medical Physicist Licensure Advisory Committee; Perfusionist Licensure Advisory Committee; and Texas Board of Respiratory Care.
- (5) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.
- (6) Applicant--A person who files an application with the board for a certificate, including a temporary certificate, general, limited, or a provisional certificate; or a person or program who files an application with the board for approval to act as an instructor or educational program.
- (7) Armed forces of the United States--Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States or a reserve unit of one of those branches of the armed forces.

- (8) ARRT--The American Registry of Radiologic Technologists and its predecessor or successor organizations.
- (9) ASRT--The American Society of Radiologic Technologists and its predecessor or successor organizations.
- (10) Board--The Texas Board of Medical Radiologic Technology.
- (11) Cardiovascular (CV)--Limited to radiologic procedures involving the use of contrast media and or ionizing radiation for the purposes of diagnosing or treating a disease or condition of the cardiovascular system.
- (12) CBRPA--Certification Board for Radiology Practitioner Assistants.
- (13) [(12)] Certificate--A medical radiologic technologist certificate, general, limited or provisional, issued by the board.
- (14) [(13)] Chiropractor--A person who is licensed by the Texas Board of Chiropractic Examiners as a doctor of chiropractic.
- (15) [(14)] Dentist--A person who is licensed by the Texas State Board of Dental Examiners as a doctor of dentistry.
- (16) [(15)] Direct supervision --Supervision and control by a medical radiologic technologist or a practitioner who:
 - (A) assumes legal liability for a student employed to perform a radiologic procedure and enrolled in a program that meets the requirements adopted under Texas Occupations Code Section 601.052; and
 - (B) is physically present during the performance of the radiologic procedure to provide consultation or direct the action of the student.
- (17) [(16)] Education program--Clinical training or any other program offered by an organization approved by the advisory board that:
 - (A) has a specified objective;
 - (B) includes planned activities for participants; and
 - (C) uses an approved method for measuring the progress of participants.
- (18) [(17)] Executive director--The executive director of the Agency or the authorized designee of the executive director.
- (19) [(18)] Federally qualified health center (FQHC)--A health center as defined by 42 United States Code, §1396d(L)(2)(B).
- (20) [(19)] Fluorography--Hard copy of a fluoroscopic image; also known as spot films.
- (21) [(20)] Fluoroscopy--The practice of examining tissues using a fluorescent screen, including digital and conventional methods.
- (22) [(21)] General certification--An authorization to perform radiologic procedures.
- (23) [(22)] Good professional character--An applicant for licensure must not be in violation of or have committed any act described in the Medical Radiologic Technologist Certification Act, §§601.302-.303, Texas Occupations Code Annotated.
- (24) [(23)] Hospital--A facility that:
 - (A) is:
 - (i) a general hospital or a special hospital, as those terms are defined by §241.003, Health and Safety Code, including a hospital maintained or operated by the state; or

(ii) a mental hospital licensed under Chapter 577, Health and Safety Code; and

(B) has an organized medical staff.

(25) [(24)] Instructor--An individual approved by the board to provide instruction and training in the discipline of medical radiologic technology in an educational setting.

(26) [(25)] JRCCVT--The Joint Review Committee on Education in Cardiovascular Technology.

(27) [(26)] JRCERT--The Joint Review Committee on Education in Radiologic Technology.

(28) [(27)] JRCNMT--The Joint Review Committee on Educational Programs in Nuclear Medicine Technology.

(29) [(28)] Limited certification--An authorization to perform radiologic procedures that are limited to specific parts of the human body.

(30) [(29)] Limited medical radiologic technologist (LMRT)--A person who holds a limited certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to specific parts of the bodies of other persons for a medical purpose. The limited categories are the skull, chest, spine, extremities, podiatric, chiropractic and cardiovascular. The term does not include a practitioner.

(31) [(30)] Medical Board--The Texas Medical Board.

(32) [(31)] Medical radiologic technologist (MRT)--A person who holds a general certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to other persons for medical purpose. The term does not include a practitioner.

(33) [(32)] Military service member--A person who is on active duty.

(34) [(33)] Military spouse--A person who is married to a military service member.

(35) [(34)] Military veteran--A person who served on active duty and who was discharged or released from active duty.

(36) [(35)] Mobile service operation--The provision of radiation machines and personnel at temporary sites for limited time periods. The radiation machines may be fixed inside a motorized vehicle or may be a portable radiation machine that may be removed from the vehicle and taken into a facility for use.

(37) [(36)] NMTCB--Nuclear Medicine Technology Certification Board and its successor organizations.

(38) [(37)] Non-certified technician (NCT)--A person who has completed a training program approved by the board and who is registered with the board under this chapter. An NCT may not perform a radiologic procedure which has been identified as dangerous or hazardous.

(39) [(38)] Open Meetings Act--Texas Government Code Annotated, Chapter 551 as amended.

(40) [(39)] Party--The board and each person named or admitted as a party in a hearing before the State Office of Administrative Hearings.

(41) [(40)] Pediatric--Pertaining to radiologic procedures performed on a person who is between the age range of fetus to age 18 or as otherwise defined by Texas law, when the growth and developmental processes are generally complete. These rules do not prohibit

a practitioner from taking into account the individual circumstances of each patient and determining if the upper age limit requires variation by not more than two years.

(42) [(41)] Physician--A person licensed by the Texas Medical Board as a doctor of medicine or osteopathy.

(43) [(42)] Physician assistant--A person licensed by the Texas Physician Assistant Board to practice as a physician assistant.

(44) [(43)] Podiatrist--A person licensed by the Texas State Board of Podiatric Medical Examiners as a doctor of podiatry.

(45) [(44)] Practitioner--A chiropractor, dentist, physician, or podiatrist who prescribes radiologic procedures for other persons.

(46) [(45)] Presiding Officer--The person designated by the Governor to serve as the presiding officer of the board.

(47) [(46)] Provisional medical radiologic technologist (PMRT)--A person who holds a provisional certificate issued under the Act, and who, under the direction of a practitioner, intentionally administers radiation to other persons for a medical purpose. The authorization to perform radiologic procedures under the provisional certificate shall not exceed 180 days from date of the certificate's issuance. The term does not include a practitioner.

(48) [(47)] Radiation--Ionizing radiation:

(A) in amounts beyond normal background levels; and

(B) from a source such as a medical or dental radiologic procedure.

(49) [(48)] Radiologic procedure--A procedure or article, including a diagnostic X-ray or a nuclear medicine procedure, that:

(A) is intended for use in:

(i) the diagnosis of disease or other medical or dental conditions in humans; or

(ii) the cure, mitigation, treatment, or prevention of disease in humans; and

(B) achieves its intended purpose through the emission of ionizing radiation.

(50) [(49)] Radiologic technology--The administration of radiation to a person for a medical purpose.

(51) Radiologist--a physician specializing in radiology certified by or board-eligible for the American Board of Radiology, the American Osteopathic Board of Radiology, the Royal College of Radiologists, or the Royal College of Physicians and Surgeons of Canada.

(52) Radiologist assistant (RA)--an advanced-level medical radiologic technologist who is certified as:

(A) a registered radiologist assistant by the American Registry of Radiologic Technologists; or

(B) a radiology practitioner assistant by the Certification Board for Radiology Practitioner Assistants.

(53) [(50)] Registered nurse--A person licensed by the Texas Board of Nursing to practice professional nursing.

(54) [(51)] Registry--A list of names and other identifying information of non-certified technicians registered with the board.

(55) [(52)] SACS--The Southern Association of Colleges and Schools, Commission on Colleges.

(56) [(53)] Sponsoring institution--A hospital, educational, other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

(57) [(54)] State--Any state, territory, or insular possession of the United States and the District of Columbia.

(58) [(55)] Submit--The term used to indicate that a completed item has been actually received and date-stamped by the board along with all required documentation and fees, if any.

(59) [(56)] Supervision--Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

(60) [(57)] Temporary certification, general or limited--An authorization to perform radiologic procedures for a limited period, not to exceed one year.

(61) [(58)] X-ray equipment--An x-ray system, subsystem, or component thereof. For the purposes of this rule, the types of X-ray equipment are as follows:

(A) portable X-ray equipment--X-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled. Portable X-ray equipment may also include equipment designed to be hand-carried;

(B) stationary X-ray equipment--X-ray equipment that is installed in a fixed location; or

(C) mobile stationary X-ray equipment--X-ray equipment that is permanently affixed to a motor vehicle or trailer with appropriate shielding.

§194.6. *Procedural Rules and Minimum Eligibility Requirements for Applicants for a Certificate or Placement on the Board's Non-Certified Technician [(General)] Registry.*

(a) Except as otherwise provided in this chapter, an individual must be certified or hold a temporary certificate as a radiologist assistant, medical radiologic technologist or limited radiologic technologist, or be placed by the board on the [general] registry for non-certified technicians before the individual may perform a radiologic procedure.

(b) Types of Certificates. The board shall issue general certificates, limited certificates, temporary certificates (general or limited), or provisional certificates.

(c) General Requirements.

(1) Except as otherwise required in this section, an applicant for temporary or regular certification as an RA, MRT₂, or LMRT, or registration as an NCT must:

(A) graduate from high school or its equivalent as determined by the Texas Education Agency;

(B) attain at least 18 years of age;

(C) submit an application on a form prescribed by the board;

(D) pay the required application fee, as set forth under Chapter 175 of this title (relating to Fees and Penalties);

(E) provide a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation;

(F) certify that the applicant is mentally and physically able to perform radiologic procedures;

(G) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked or suspended;

(H) not have proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to perform radiologic procedures in the state, a Canadian province, or the uniformed service of the United States in which it was issued;

(I) not have pending any prosecution against applicant in any state, federal, or international court for any offense that under the laws of this state is a felony, or an offense that is a misdemeanor of moral turpitude;

(J) be of good professional character as defined under §194.2 of this title (relating to Definitions);

(K) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications; and

(L) meet any other requirement established by rules adopted by the board.

(2) The board retains the discretion to consider the nature of any final disciplinary action, other than suspension or revocation, when determining whether to issue the certificate or other authorization.

(d) Additional Requirements for Specific Certificate Types or Placement on the Board's Non-Certified Technician [General] Registry.

(1) Radiologist Assistant Certificate. In addition to meeting requirements under subsection (c) of this section, an applicant must pass the jurisprudence examination in accordance with subsection (e) of this section, and meet the following requirements:

(A) possess current national certification and registration as a radiologist assistant by ARRT;

(B) possess current national certification as a radiology practitioner assistant by CBRPA; or

(C) be currently licensed, certified, or registered as a radiologist assistant in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or are substantially equivalent to the requirements for Texas radiologist assistant certification.

(2) [(+) General Medical Radiologic Technologist Certificate [medical radiologic technologist certificate]. In addition to meeting requirements under subsection (c) of this section, to qualify for a general certificate, an applicant must pass the jurisprudence examination in accordance with subsection (e) of this section, and meet at least one of the following requirements:

(A) possession of current national certification as a registered technologist, radiographer, radiation therapist, or nuclear medicine technologist by ARRT;

(B) successful completion of the ARRT's examination in radiography, radiation therapy, or nuclear medicine technology;

(C) possession of current national certification as a nuclear medicine technologist by the NMTCB;

(D) successful completion of the NMTCB's examination in nuclear medicine technology; or

(E) current licensure, certification, or registration as a medical radiologic technologist in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or are substantially equivalent to the requirements for Texas general certification.

(3) ~~[(2)]~~ Limited Medical Radiologic Technologist Certificate. In addition to meeting requirements under subsection (c) of this section, to qualify for a limited certificate, an applicant must meet at least one of the following requirements:

(A) the successful completion of a limited program as set out in §194.12 of this title ~~[chapter]~~ (relating to Standards for the Approval of Certificate Program Curricula and Instructors) and the successful completion of the jurisprudence examination and appropriate limited examination in accordance with subsection (e) of this section;

(B) current licensure, certification, or registration as an LMRT in another state, the District of Columbia, or a territory of the United States of America whose requirements are more stringent than or substantially equivalent to the requirements for Texas limited certification and successful completion of the jurisprudence examination in accordance with subsection (e) of this section; or

(C) current general certification as an MRT issued by the board. The MRT must surrender the general certificate and submit a written request for a limited certificate indicating the limited categories requested.

(4) Temporary Radiologist Assistant Certificate.

(A) The board may issue a temporary radiologist assistant certificate to an applicant who, in addition to meeting the requirements of subsection (c) of this section:

(i) has successfully completed a course of study in an ARRT or CBRPA-recognized radiologist assistant program;

(ii) is approved by ARRT or CBRPA as examination eligible;

(iii) meets all the qualifications for a radiologist certificate and has signed an agreed order or remedial plan but is waiting for the next scheduled meeting of the board for the agreed order or remedial plan to be approved and the radiologist certificate to be issued; or

(iv) has not on a full-time basis actively practiced as defined under subsection (i) of this section, but meets guidelines set by the board addressing factors that include, but are not limited to, length of time out of active practice and duration of temporary certificates. In order to be determined eligible for a temporary radiologist assistant certificate to remedy active practice issues, the applicant must:

(I) be supervised by a radiologist (as defined under §194.2 of this title) who:

(-a-) holds an active, unrestricted license in Texas;

(-b-) has not been the subject of a disciplinary order, unless the order was administrative in nature; and

(-c-) is not a relative or family member of the applicant; and

(II) present written verification from the radiologist that he or she will:

(-a-) provide on-site, continuous supervision of the applicant and provide reports of such supervision to the board according to rules adopted by the board; and

(-b-) retain professional and legal responsibility for the care rendered by the applicant while practicing under the temporary certificate.

(B) A temporary radiologist assistant certificate granted under this paragraph may be valid for not more than one year from the date issued. A temporary radiologist assistant certificate may be revoked at any time the board deems necessary.

(C) An individual who practices after the expiration of the temporary certificate will be considered to be practicing without a certificate and may be subject to disciplinary action.

(5) ~~[(3)]~~ Temporary General Medical Radiologic Technologist Certificate.

(A) The board may issue a temporary general certificate to an applicant who, in addition to meeting the requirements of subsection (c) of this section:

(i) has successfully completed a course of study in radiography, radiation therapy, or nuclear medicine technology which is accredited by an agency which is recognized by:

(I) the Council for Higher Education Accreditation, including but not limited to: the Joint Committee on Education in Nuclear Medicine Technology (JRCNMT); or

(II) the United States Secretary of Education, including, but not limited to: the Joint Review Committee on Education in Radiologic Technology (JRCERT), Accrediting Bureau of Health Education Schools, or the Southern Association of Colleges and Schools, Commission on Colleges;

(ii) is approved by the ARRT as examination eligible;

(iii) is approved by the NMTCB as examination eligible;

~~(iv) is currently licensed or otherwise registered as an MRT in another state, the District of Columbia, or a territory of the United States whose requirements are more stringent than or substantially equivalent to the Texas requirements for certification at the time of application to the board;~~

(iv) ~~[(v)]~~ has completed education, training and clinical experience which is substantially equivalent to that of an accredited educational program as listed in clause (i) of this subparagraph;

(v) ~~[(vi)]~~ meets all the qualifications for a general certificate and has signed an agreed order or remedial plan but is waiting for the next scheduled meeting of the board for the agreed order or remedial plan to be approved and the general certificate to be issued; or

(vi) ~~[(vii)]~~ has not on a full-time basis actively practiced as defined under subsection (i) of this section, but meets guidelines set by the board addressing factors that include, but are not limited to, length of time out of active practice and duration of temporary certificates. In order to be determined eligible for a temporary general certificate to remedy active practice issues, the applicant must:

(I) be supervised by a general certificate holder or practitioner (as defined under §194.2 of this section ~~[chapter]~~) who:

(-a-) holds an active, unrestricted license or certificate in Texas;

(-b-) has not been the subject of a disciplinary order, unless the order was administrative in nature; and

(-c-) is not a relative or family member of the applicant; and

(II) present written verification from the general certificate holder or practitioner that he or she will:

(-a-) provide on-site, continuous supervision of the applicant and provide reports of such supervision to the board according to rules adopted by the board; and

(-b-) retain professional and legal responsibility for the care rendered by the applicant while practicing under the temporary certificate.

(B) A temporary general certificate granted under this paragraph may be valid for not more than one year from the date issued. A temporary general certificate may be revoked at any time the board deems necessary.

(C) An individual who practices after the expiration of the temporary certificate will be considered to be practicing without a certificate and may be subject to disciplinary action.

(6) [(4)] Temporary Limited Medical Radiologic Technologist Certificate.

(A) The board may issue a temporary limited certificate to an applicant who, in addition to meeting requirements under subsection (c) of this section:

(i) has successfully completed a limited certificate program in the categories of skull, chest, spine, abdomen or extremities, approved in accordance with §194.12 of this title [chapter];

(ii) meets all the qualifications for a limited certificate and has signed an agreed order or remedial plan but is waiting for the next scheduled meeting of the board for the agreed order or remedial plan to be approved and the limited certificate to be issued; or

(iii) has not on a full-time basis actively practiced as defined under subsection (i) of this section, but meets guidelines set by the board addressing factors that include, but are not limited to, length of time out of active practice and duration of temporary certificates. In order to be determined eligible for a temporary limited certificate to remedy active practice issues, the applicant must:

(I) be supervised by a general certificate holder or practitioner ("practitioner" is defined under §194.2 of this title [chapter]) who:

(-a-) holds an active, unrestricted license or certificate in Texas;

(-b-) has not been the subject of a disciplinary order, unless the order was administrative in nature; and

(-c-) is not a relative or family member of the applicant; and

(II) present written verification from the general certificate holder or practitioner that he or she will:

(-a-) provide on-site, continuous supervision of the applicant and provide reports of such supervision to the board; and

(-b-) retain professional and legal responsibility for the care rendered by the applicant while practicing under the temporary certificate.

(B) A temporary limited certificate granted based upon successful completion of approved programs under subparagraph (A)(i) of this paragraph may not be valid for more than six months from the date issued, unless the applicant has met all qualifications for the limited certificate, and is on the agenda for the next scheduled meeting of the board for the limited certificate to be issued.

(C) Temporary limited certificates granted for the purpose of remedying active practice deficiencies under subparagraph

(A)(iii) of this paragraph may not be valid for more than 12 months from the date of issue.

(D) A temporary limited certificate may be revoked at any time the board deems necessary.

(E) An individual who practices after the expiration of the temporary certificate will be considered to be practicing without a certificate and may be subject to disciplinary action.

(7) [(5)] Provisional Medical Radiologic Technologist Certificate.

(A) To qualify for a provisional general certificate, an applicant must:

(i) be currently licensed or certified in another jurisdiction;

(ii) have been licensed or certified in good standing as a MRT for at least two years in another jurisdiction, including a foreign country, that has licensing or certification requirements substantially equivalent to the requirements of the Act;

(iii) pass a national or other examination recognized by the board relating to the practice of radiologic technology;

(iv) provide a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation; and

(v) be sponsored by a medical radiologic technologist certified by the board under the Act with whom the provisional certificate holder will practice during the time the person holds a provisional certificate.

(B) A provisional certificate is valid until the date the board approves or denies the provisional certificate holder's application for a certificate.

(C) The board must approve or deny a provisional certificate holder's application for a certificate not later than the 180th day after the date the provisional certificate is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(8) [(6)] Placement on the Non-Certified Technician [General] Registry.

(A) Registration Required. In accordance with §601.202 of the Act, a person who intentionally uses radiologic technology, other than a certificate holder, physician assistant, registered nurse, or person performing procedures under the supervision of a dentist, must register with the board prior to performing any procedures.

(B) In addition to meeting the requirements under subsection (c) of this section, to qualify for placement on the board's NCT [General] Registry, an applicant must successfully complete a training program approved by the board in accordance with §194.13 of this title [chapter] (relating to Mandatory Training Programs for Non-Certified Technicians) and pass the jurisprudence examination in accordance with subsection (e) of this section.

(e) Examinations Required.

(1) Jurisprudence examination. An applicant must pass the jurisprudence examination ("JP exam"), which shall be conducted on the laws, rules, or regulations applicable to the practice of medical ra-

diologic technology in this state. The JP exam shall be developed and administered as follows:

(A) The staff of the Medical Board shall prepare questions for the JP exam and provide a facility by which applicants can take the examination.

(B) An examinee shall not be permitted to bring books, compends, notes, journals, calculators or other documents or devices into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(C) Irregularities during an examination, such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action.

(D) Applicants must pass the JP exam with a score of 75 or better.

(E) A person who has passed the JP exam shall not be required to retake the exam for re-licensure, except as a specific requirement of the board as part of an order.

(2) Additional Examinations Required for Certification.

(A) Radiologist Assistant Certificate. The following examinations are accepted for a radiologist assistant application:

(i) the ARRT Registered Radiologist Assistant examination; or

(ii) the CBRPA Radiology Practitioner Assistant examination.

(B) ~~[(A)]~~ General Certificate. The following examinations are accepted for a general certificate application:

(i) NMTCB examination in nuclear medicine technology; or

(ii) The appropriate ARRT examination in radiography, nuclear medicine technology, or radiation therapy. Determination of the appropriate examination shall be made on the basis of the type of educational program completed by the applicant for a general certificate.

(C) ~~[(B)]~~ Limited Certificate.

(i) The following examinations are accepted for a limited certificate application: Successful completion of the appropriate examination, including the core knowledge component, as follows:

(I) skull--the ARRT examination for the limited scope of practice in radiography (skull);

(II) chest--the ARRT examination for the limited scope of practice in radiography (chest);

(III) spine--the ARRT examination for the limited scope of practice in radiography (spine);

(IV) extremities--the ARRT examination for the limited scope of practice in radiography (extremities);

(V) chiropractic--the ARRT examinations for the limited scope of practice in radiography (spine and extremities);

(VI) podiatric--the ARRT examination for the limited scope of practice in radiography (podiatry); or

(VII) cardiovascular--the Cardiovascular Credentialing International invasive registry examination.

(ii) Limited Certification Exam Attempt Authorization.

(I) Individuals enrolled or who have completed an approved limited medical radiologic program, as set forth under §194.12 of this title ~~[chapter]~~, must apply to the board and obtain authorization in order to attempt passage of accepted examination(s) set forth under subparagraph (B) of this paragraph.

(II) In order to obtain authorization to attempt passage of the exam, an individual must provide the following documentation:

(-a-) Evidence of current enrollment in an approved limited program as set forth by §194.12 of this title ~~[chapter]~~ and an attestation stating that the individual has completed the education components necessary for qualifying the individual to pass the appropriate limited scope examination, signed by the program director or registrar; or

(-b-) a copy of a certificate of completion or official transcript showing completion of an approved limited program, as set out in §194.12 of this title ~~[chapter]~~.

(III) Approval to attempt passage of the limited scope examination is not authorization to perform limited medical radiologic technology procedures. An individual must apply for and be granted a temporary or limited or general certificate prior to performing limited medical radiologic technology procedures or meet an exception to such certification requirements provided for under the Act.

(iii) Individuals approved to sit for the limited certification examination will be allowed three attempts to pass the examination within one year from the date of the initial authorization granted by the board. Individuals who fail to pass within the required number of attempts or one-year-period will not be eligible for additional attempts, except as provided in clause (iv) of this subparagraph.

(iv) Notwithstanding clause (iii) of this subparagraph, an individual who fails to pass the examination within the required number of attempts or within the one-year-period may obtain approval for one additional attempt, if the individual successfully completes a review course of no less than 60 hours of continuing education in length, offered by an approved limited program under §194.12 of this title ~~[chapter]~~. The additional attempt must be made no later than one year from the date of the board's approval granted. Those failing to pass the examination within the additional one-year period allowed shall no longer be eligible for additional attempts at passage, and shall only be eligible for state examination attempts for the purpose of state limited certification by again meeting the requirements for approval of exam attempt authorization set forth under clause (ii)(I) of this subparagraph.

(3) Examination schedules. A schedule of examinations indicating the date(s), location(s), fee(s) and application procedures shall be provided by the board or organization administering the examination(s).

(4) Standards of acceptable performance. The scaled score to determine pass or fail performance shall be 75. For the cardiovascular limited certificate, the Cardiovascular Credentialing International examinations (Cardiovascular Science Examination and/or the Invasive Registry Examination as required to obtain the Registered Cardiovascular Invasive Specialist RCIS credential) the scaled score to determine pass or fail performance shall be 70.

(5) Completion of examination application forms. Each applicant shall be responsible for completing and transmitting appropriate examination application forms and paying appropriate examination fees by the deadlines set by the board or organization administering the examinations prescribed by the board.

(6) Examination Results.

(A) Notification to examinees. Results of an examination prescribed by the board but administered under the auspices of another organization will be communicated to the applicant by the board, unless the contract between the board and that organization provides otherwise.

(B) Score release. The applicant is responsible for submitting a signed score release to the examining agency or organization or otherwise arranging to have examination scores forwarded to the board.

(C) Deadlines. The board shall notify each examinee of the examination results within 14 days of the date the board receives the results. If notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day. The board may require a testing service to notify a person of the results of the person's examination.

(7) Refunds. Examination fee refunds will be in accordance with policies and procedures of the board or the organization prescribed by the board to administer an examination. No refunds will be made to examination candidates who fail to appear for an examination.

(f) Documentation. The following documentation shall be submitted as a part of the certification application process:

(1) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present certified copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant should send the original naturalization certificate by certified mail to the board for inspection.

(2) ARRT, CBRPA, or NMTCB-Certified or Considered Exam Eligible. For applicants certified by ARRT, CBRPA, or NMTCB or considered examination eligible by such organizations, the applicant must provide a letter of verification of current certification or examination eligibility sent directly from ARRT, CBRPA or NMTCB, as applicable.

(3) Training Program Certification. For applicants who are graduates of a program accepted by the board for certification under §194.12 or §194.13 of this title [chapter], each applicant must have a certificate of successful completion of an educational program submitted directly from a program accepted by the board for certification, on a form provided by the board.

(4) Examination Scores. Each applicant for certification must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations accepted by the board for certification.

(5) Verification from other states. On request of board staff, an applicant must have any state, in which he or she has ever been registered, certified, or licensed as any type of healthcare provider regardless of the current status of the registration, certification, or license, submit to the board a letter verifying the status of the registration, certification, or license and a description of any sanctions or pending disciplinary

matters. The information must be sent directly to the board from the state licensing entities.

(6) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition must be requested by the applicant to arresting authority, and that authority must submit copies directly to the board.

(7) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance, as applicable;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter shall be accompanied by supporting documentation including court records if applicable. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) compose and provide a statement explaining the circumstances pertaining to patient care in defense of the allegations.

(8) Additional Documentation. An applicant must submit additional documentation as is deemed necessary to facilitate the investigation of any application for certification.

(g) Review and Recommendations by the Executive Director.

(1) The executive director or designee shall review applications for certification or other authorization and may determine whether an applicant is eligible for certification or other authorization, or refer an application to a committee of the board for review.

(2) If the executive director or designee determines that the applicant clearly meets all requirements, the executive director or designee, may issue a certificate or other authorization to the applicant, to be effective on the date issued without formal board approval, as authorized by §601.052 of the Act.

(3) If the executive director determines that the applicant does not clearly meet all certification or other authorization requirements as prescribed by the Act and this chapter, a certificate or other authorization may be issued only upon action by the board following a recommendation by the Licensure Committee, in accordance with §§601.052 of the Act and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility). Not later than the 20th day after the date the applicant receives notice of the executive director's determination the applicant shall:

(A) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title; or

(B) withdraw his or her application.

(C) If an applicant fails to take timely action, as provided under this subsection, such inaction shall be deemed a withdrawal of his or her application.

(4) To promote the expeditious resolution of any matter concerning an application for certification or other authorization, the executive director, with the approval of the board, may recommend that an applicant be eligible for a certificate or other authorization under certain terms and conditions and present a proposed agreed order or

remedial plan to the applicant. Not later than the 20th day after the date the applicant receives notice of the executive director's recommendation for an agreed order or remedial plan, the applicant shall do one of the following:

(A) sign the order or remedial plan and the order/remedial plan shall be presented to the board for consideration and acceptance without initiating a Disciplinary Licensure Investigation (as defined in §187.13 of this title) or appearing before a committee of the board concerning issues relating to licensure eligibility; or

(B) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title; or

(C) withdraw his or her application.

(D) If an applicant fails to take timely action, as provided under this subsection, such inaction shall be deemed a withdrawal of his or her application.

(h) Committee Referrals. An applicant who has either requested to appear before the licensure committee of the board or has elected to be referred to the licensure committee of the board due to a determination of ineligibility by the executive director in accordance with section, in lieu of withdrawing the application for certification, may be subject to a Disciplinary Licensure Investigation as defined in §187.13 of this title. Review of the executive director's determination by a committee of the board shall be conducted in accordance with §187.13 of this title. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act. The board may disclose such reports to appropriate licensing authorities in other states.

(i) All applicants must provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced, been a student at an acceptable approved program under §194.12 or §194.13 of this title [chapter] or been on the active teaching faculty of an acceptable approved program under §194.12 or §194.13 of this title [chapter], within one of the last two years preceding receipt of an application for certification or registration. The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(j) Applicants who are unable to demonstrate active practice on a full time basis may, in the discretion of the board, be eligible for an unrestricted or restricted certificate or placement on the non-certified technician registry, subject to one or more of the following conditions or restrictions as set forth in paragraphs (1) - (5) of this subsection:

(1) completion of specified continuing education hours directly or indirectly related to the disciplines of radiologic technology and offered by an institution accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools (SACS), or by agencies or organizations such as JRCERT, JRCNMT, Joint Review Committee on Education in Cardiovascular Technology (JTCCVT), the Council on Chiropractic Education (CCE), ABHES, or the American Society of Radiologic Technologists (ASRT);

(2) current certification by ARRT, CBRPA, or NMTCB;

(3) limitation and/or exclusion of the practice of the applicant to specified activities of the practice;

(4) remedial education; and

(5) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

(k) Applicants for certification, NCT registration, or other authorization:

(1) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for certification or registration will require submission of a new application and inclusion of the current [certification] fee. An extension to an application may be granted under certain circumstances, including:

(A) Delay by board staff in processing an application;

(B) Application requires Licensure Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) Licensure Committee requires an applicant to meet specific additional requirements for certification or registration and the application will expire prior to deadline established by the Committee;

(D) Applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;

(E) Applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events;

(2) who in any way falsify the application may be required to appear before the board;

(3) on whom adverse information is received by the board may be required to appear before the board;

(4) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are filed with the board;

(5) may be required to sit for additional oral or written examinations that, in the opinion of the board, are necessary to determine competency of the applicant;

(6) must have the application complete in every detail at least 20 days prior to the board meeting in which they are considered for certification. Applicants may qualify for a temporary certificate prior to being considered by the board for certification, contingent upon meeting the minimum requirements for a temporary certificate under this section;

(7) who previously held a Texas health care provider license, certificate, permit, or registration may be required to complete additional forms as required.

(l) Alternative Procedures for Military Service Members, Military Veterans, and Military Spouses.

(1) An applicant who is a military service member, military veteran, or military spouse may be eligible for alternative demonstrations of competency for certain requirements related to an application for certification or placement on the board's Non-Certified Technician [General] Registry. Unless specifically allowed in this subsection, an applicant must meet the requirements for certification as a medical radiologic technologist, limited medical radiologic technologist, or placement on the board's Non-Certified Technician [General] Registry as specified in this chapter.

(2) To be eligible, an applicant must be a military service member, military veteran, or military spouse and meet one of the following requirements:

(A) hold an active unrestricted certificate, license, or registration as a medical radiologic technologist, limited medical radiologic technologist, or non-certified technician in another state, the District of Columbia, or a territory of the United States that has requirements that are substantially equivalent to the requirements for a Texas certificate or placement on the NCT Registry; or

(B) within the five years preceding the application date held a certificate to practice radiologic technology in this state.

(3) The executive director may waive any prerequisite to obtaining a certificate or other authorization for an applicant described in paragraph (1) of this subsection after reviewing the applicant's credentials.

(4) Applications for certification or other authorization from applicants qualifying under paragraphs (1) and (2) of this subsection shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the certificate.

(5) Alternative Demonstrations of Competency Allowed. Applicants qualifying under paragraphs (1) and (2) of this subsection:

(A) in demonstrating compliance with subsection (i) of this section must only provide sufficient documentation to the board that the applicant has, on a full-time basis, actively practiced, been a student at an approved program, or has been on the active teaching faculty of an approved program, within one of the last three years preceding receipt of an application for certification;

(B) notwithstanding the one-year expiration in subsection (k)(1) of this section, are allowed an additional six months to complete the application prior to it becoming inactive; and

(C) notwithstanding the 20-day deadline in subsection (k)(6) of this section, may be considered for certification up to five days prior to the board meeting.

(m) Applicants with Military Experience.

(1) The board shall, with respect to an applicant who is a military service member or military veteran as defined in §194.2 of this title [chapter], credit verified military service, training, or education toward the requirements, other than an examination requirement, for a certificate or other authorization issued by the board.

(2) This section does not apply to an applicant who:

(A) has had a license, certificate, or registration to practice radiologic technology suspended or revoked by this state, another state, a Canadian province, or another country;

(B) holds a license, certificate, or registration to practice radiologic technology issued by another state, Canadian province, or another country that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

(n) Re-Application for Certification or other Authorization Prohibited. A person who has been determined ineligible for a certificate or placement on the NCT Registry by the Licensure Committee may not reapply for a certificate or placement on the NCT Registry prior to the expiration of one year from the date of the board's ratification of the Licensure Committee's determination of ineligibility and denial [of certification].

(o) Request for Criminal History Evaluation Letter.

(1) In accordance with Texas Occupations Code, §53.102, prior to applying for certification or other authorization, an individual may request that board staff review the person's criminal history to determine if the person is potentially ineligible for certification or other authorization based solely on the person's criminal background.

(2) Requestors must submit their requests in writing along with appropriate fees as provided in §175.1 of this title (relating to Application and Administrative Fees).

(3) The board may require additional documentation including fingerprint cards before issuing a criminal history evaluation letter.

(4) The board shall provide criminal history evaluation letters that include the basis for potential ineligibility, if grounds for ineligibility exist to all requestors no later than the 90th day after the board receives all required documentation to allow the board to respond to a request.

(5) If a requestor does not provide all requested documentation within one year of submitting the original request, the request will be considered as withdrawn.

(6) All evaluations letters shall be based on existing law at the time of the request. All requestors remain subject to the requirements for licensure at the time of application and may be determined ineligible under existing law at the time of application. If a requestor fails to provide complete and accurate information to the board, the board may invalidate the criminal history evaluation letter.

(7) An individual shall be permitted to apply for certification or other authorization, [licensure,] regardless of the board's determination in a criminal history evaluation letter.

§194.7. Biennial Renewal of Certificate or Placement on the Board's Non-Certified Technician [General] Registry [for Non-Certified Technicians Generally].

(a) Temporary Certificates.

(1) A temporary certificate shall expire one year from the date of issue. A person whose temporary certificate has expired is not eligible to reapply for another temporary certificate.

(2) A temporary certificate is not subject to a renewal or extension for any reason.

(3) Persons who hold temporary certificates, either radiologist assistant, general, or limited, are not subject to continuing education requirements set forth under subsection (c) of this section.

(b) Biennial Registration and Fee Required. [General and Limited Certificates; Placement on the Board's General Registry for Non-Certified Technicians].

(1) Certificate holders [MRTs and LMRTs certified] and NCTs registered under the Act shall renew authorization to practice [register] biennially and pay a fee. Upon [A holder of a certificate or NCT general registration permit may, on] notification from the board, [renew an] unexpired authorization may be renewed [certificate or permit] by submitting the required form and documents and by paying the required renewal fee to the board on or before the expiration date of the authorization [permit].

(2) The fee shall accompany the required form which legibly sets forth the certificate or NCT registration [permit] holder's name, mailing address, business address, and other necessary information prescribed by the board. The certificate or NCT registration [permit] holder must include with the required forms and fee documentation of continuing education completed during the previous two years to the date of renewal ("biennial renewal period").

(c) Continuing education requirements.

(1) Generally.

(A) RA. As a prerequisite to the biennial renewal of a radiologist assistant certificate, a minimum of 24 hours of continuing education hours must be completed during each biennial renewal period. The hours must be in activities that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a Recognized Continuing Education Evaluation Mechanism (RCEEM) or RCEEM+ during the biennial renewal period.

(B) [(A)] MRT. As a prerequisite to the biennial renewal [registration] of an MRT [a] certificate, a minimum of 24 hours of continuing education hours must be completed during each biennial renewal period. The continuing education must be completed in the following categories:

(i) At least 12 hours of the required number of hours must be satisfied by completing activities [attendance and participation in formal courses] that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a RCEEM [Recognized Continuing Education Evaluation Mechanism (RCEEM)] or RCEEM+ during the biennial renewal period.

(ii) The remaining 12 credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(C) [(B)] LMRT. As a prerequisite to the biennial renewal [registration] of a limited certificate, a minimum of 18 hours of continuing education acceptable to the board must be completed during each biennial renewal period. The hours completed must be in the topics of general radiation health and safety or related to the categories of limited certificate held. The continuing education must be completed in the following categories:

(i) At least nine hours of the required number of hours must be satisfied by completing activities [attendance and participation in formal courses] that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a RCEEM [Recognized Continuing Education Evaluation Mechanism (RCEEM)] or RCEEM+ during the biennial renewal period.

(ii) The remaining nine credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(D) [(C)] An RA, MRT₂ or LMRT who also holds a current Texas license, registration, or certification in another health profession may satisfy the continuing education requirement for renewal of a certificate with hours counted toward renewal of the other license, registration, or certification, provided such hours meet all the requirements of this subsection.

(E) [(D)] An RA or MRT [or LMRT] who holds a current and active annual registration or credential card issued by ARRT

indicating that the certificate holder is in good standing and not on probation satisfies the continuing education requirement for renewal of a [general or limited] certificate, provided the hours accepted by ARRT were completed during the certificate holder's biennial renewal period and meet or exceed the hour the requirements set out in this subsection. The board must be able to verify the status of the card presented by the certificate holder electronically or by other means acceptable to the board. The board may review documentation of the continuing education activities in accordance with paragraph (5) of this subsection.

(F) [(E)] NCTs. As a prerequisite to the biennial renewal [registration] of a placement on the NCT registry, [general registration permit], the individual must complete a minimum of 12 hours of continuing education during each biennial renewal period. The continuing education must be completed in the following categories:

(i) At least six hours of the required number of hours must be satisfied by completion of activities [attendance and participation in formal] that are designated for Category A or A+ credits of continuing education evaluated by an organization recognized by ARRT as a RCEEM [Recognized Continuing Education Evaluation Mechanism (RCEEM)] or RCEEM+ during the biennial renewal period.

(ii) The remaining six credits for the biennial renewal period may be composed of self-study or courses not approved for formal CE, and shall be recorded in a manner that can be easily transmitted to the board upon request.

(iii) Any additional hours completed through independent self-study must be verifiable, through activities that include reading materials, audio materials, audiovisual materials, or a combination thereof.

(2) Content Requirements.

(A) At least 50% of the required number of hours must be activities which are directly related to the use and application of ionizing forms of radiation to produce diagnostic images and/or administer treatment to human beings for medical purposes. For the purpose of this section, directly related topics include, but are not limited to: radiation safety, radiation biology and radiation physics; anatomical positioning; radiographic exposure technique; radiological exposure technique; emerging imaging modality study; patient care associated with a radiologic procedure; radio pharmaceuticals, pharmaceuticals, and contrast media application; computer function and application in radiology; mammography applications; nuclear medicine application; and radiation therapy applications.

(B) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are related to the use and application of non-ionizing forms of radiation for medical purposes.

(C) No more than 50% of the required number of hours may be satisfied by completing or participating in learning activities which are indirectly related to radiologic technology. For the purpose of the section, indirectly related topics include, but are not limited to, patient care, computer science, computer literacy, introduction to computers or computer software, physics, human behavioral sciences, mathematics, communication skills, public speaking, technical writing, management, administration, accounting, ethics, adult education, medical sciences, and health sciences. Other courses may be accepted for credit provided there is a demonstrated benefit to patient care.

(3) Alternative Continuing Education Accepted by the Board. The additional activities for which continuing education credit will be awarded are as follows:

(A) successful completion of an entry-level or advanced-level examination previously passed in the same discipline of radiologic technology administered by or for the ARRT during the renewal period. The examinations shall be topics dealing with ionizing forms of radiation administered to human beings for medical purposes. Such successful completion shall be limited to not more than one-half of the continuing education hours required;

(B) successful completion or recertification in a cardiopulmonary resuscitation course, basic cardiac life support course, or advanced cardiac life support course during the continuing education period. Such successful completion or recertification shall be limited to not more than:

(i) three hours credit during a renewal period for a cardiopulmonary resuscitation course or basic cardiac life support course; or

(ii) 6 hours credit during a renewal period for an advanced cardiac life support course;

(C) attendance and participation in tumor conferences (limited to six hours), in-service education and training offered or sponsored by Joint Commission-accredited or Medicare certified hospitals, provided the education/training is properly documented and is related to the profession of radiologic technology;

(D) teaching in a program accredited by a regional accrediting organization such as the Southern Association of Colleges and Schools; or an institution accredited by JRCERT, JRCNMT, JTC-CVT, CCE, ABHES, ASRT, professional organizations or associations, or a federal, state, or local governmental entity, with a limit of one contact hour of credit for each hour of instruction per topic item once during the continuing education reporting period for up to a total of 6 hours. No credit shall be given for teaching that is required as part of one's employment. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic; or

(E) developing and publishing a manuscript of at least 1,000 words in length related to radiologic technology with a limit of six contact hours of credit during a continuing education period. Upon audit by the board, the certificate holder must submit a letter from the publisher indicating acceptance of the manuscript for publication or a copy of the published work. The date of publication will determine the continuing education period for which credit will be granted. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic.

(4) Reporting Requirements. A certificate holder or NCT must report on the biennial renewal application [registration] form if she or he has completed the required continuing education during the previous renewal period.

(A) A certificate holder or NCT may carry forward continuing education credit hours that meet the requirements under this subsection and earned prior to the biennial registration renewal period which are in excess of the biennial hour requirement, and apply such hours to the subsequent renewal period requirements.

(i) For RAs or MRTs, a maximum of 48 total excess credit hours meeting the requirements under this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(ii) For LMRTs, a maximum of 24 hours meeting the requirements of this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to

a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(iii) [(B)] For NCTS, a [A NCT may carry forward continuing education credit hours that meet the requirements under this subsection and earned prior to the biennial registration renewal period which are in excess of the biennial hour requirement, and apply such hours to the subsequent renewal period requirements. A] maximum of 12 total excess credit hours meeting the requirements [under paragraph (3)(A)] of this subsection may be carried forward. Excess continuing education credits may not be carried forward or applied to a report of continuing education more than two years beyond the date of the registration following the period during which the credits were earned.

(5) Exemptions.

(A) A certificate holder or NCT [holder of a certificate or registration as a non-certified technician] may request in writing an exemption for the following reasons, subject to the approval of the certification committee of the board:

(i) catastrophic illness;

(ii) military service of longer than one year's duration outside the United States;

(iii) residence of longer than one year's duration outside the United States; or

(iv) good cause shown on written application of the certificate holder that gives satisfactory evidence to the board that the certificate holder is unable to comply with the requirement for continuing medical education.

(B) An exception under paragraph (5) of this subsection may not exceed one registration period, but may be renewed biennially, subject to the approval of the board.

(6) A certificate holder or NCT who is a military service member may request an extension of time, not to exceed two years, to complete any continuing education requirements.

(7) This subsection does not prevent the board from taking disciplinary action with respect to a NCT or certificate holder or an applicant for such authorization [a certificate] by requiring additional hours of continuing education or of specific course subjects.

(8) The board may require written verification of continuing education credits from any certificate holder or NCT within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(9) Unless exempted under the terms of this subsection, a certificate holder or NCT's failure to obtain and timely report required hours of continuing education as required and provided for in this subsection shall result in the nonrenewal of the authorization to practice [certificate] until such time as the certificate holder or NCT obtains and reports the required continuing education hours; however, the executive director of the Medical board may issue [to such a certificate holder] a temporary certificate or NCT registration numbered so as to correspond to the nonrenewed certificate or NCT registration. Such a temporary authorization to practice [certificate] shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary authorization to practice [certificate] issued pursuant to this subsection may be issued to allow the [certificate holder who has not obtained or timely reported the required number of hours an] opportunity to correct any deficiency so as not to require termination of practice.

(10) Determination of contact hour credits. A contact hour shall be defined as 50 minutes of attendance and participation. One-half contact hour shall be defined as 30 minutes of attendance and participation during a 30-minute period.

(d) Criminal History Requirement for Registration Renewal.

(1) An applicant must submit a complete and legible set of fingerprints for purposes of performing a criminal history check [of the applicant].

(2) The board may not renew the certificate or NCT [general] registration [permit] of a person who does not comply with the requirement of paragraph (1) of this subsection.

(3) A certificate holder [of a certificate or] or NCT [general registration permit] is not required to submit fingerprints under this section for the renewal of the certificate or registration [permit] if the holder has previously submitted fingerprints for the initial issuance [of the certificate NCT general registration permit] or [as part of a] prior renewal of a certificate or NCT [general] registration [permit].

(e) Report of Impairment on Registration Form.

(1) A certificate holder [of a certificate] or NCT [general registration permit] who reports an impairment that affects his or her ability to actively practice [as a MRT, LMRT, or NCT] shall be given written notice of the following:

(A) based on the individual's impairment, he or she may request:

(i) to be placed on retired status pursuant to §194.10 of this title [chapter] (relating to Retired Certificate or NCT [General] Registration [Permit]);

(ii) to voluntarily surrender the certificate or NCT registration [permit] pursuant to §194.33 of this title [chapter] (relating to Voluntary Relinquishment or Surrender of Certificate or Permit); or

(iii) to be referred to the Texas Physician Health Program pursuant to Chapter 180 of this title (relating to Texas Physician Health Program and Rehabilitation Orders); and

(B) that failure to respond to the written notice or otherwise not comply with paragraph (1) of this subsection within 45 days shall result in a referral to the board's investigation division for possible disciplinary action.

(2) The board shall provide written notice as described in paragraph (1) of this subsection within 30 days of receipt of the renewal application [certificate holder's registration] form indicating the [certificate holder's] impairment.

(f) The board shall deny an application for renewal of an authorization to practice [a certificate] upon notice of the certificate or NCT [general] registration [permit] holder's default of child support payments, as provided under Chapter 232 of the Texas Family Code, or default of a Texas Guaranteed Student Loan Corporation guaranteed student loan, as provided in the Texas Education Code, §57.491.

(g) The board shall deny an application for renewal of a certificate or NCT [general] registration [permit] or take and/or impose other disciplinary action against such an individual who falsifies an affidavit or otherwise submits false information to obtain renewal of a certificate or NCT registration, pursuant to the Act, §601.302.

(h) If the renewal fee and completed application form are not received on or before the expiration date of the certificate or NCT registration, the fees set forth in Chapter 175 of this title (relating to Fees and Penalties) shall apply.

(i) Except as otherwise provided, the board shall not waive fees or penalties.

(j) The board shall stagger biennial renewal [registration] of a certificate or NCT [general] registration [permit holders] proportionally on a periodic basis.

[k] A certificate or NCT general registration permit holder who engages in activities requiring a certificate or other authorization while in Texas, without an biennial registration permit for the current renewal period as provided for in the board rules has the same force and effect as and is subject to all penalties of practicing without a certificate or other required authorization.]

(k) [(H)] Expired Biennial Renewal [Registration].

(1) Generally.

(A) If a certificate or NCT [general registration permit holder's] registration has been expired for less than one year, the certificate or NCT registration [permit holder] may be renewed [obtain a new registration] by submitting to the board a completed renewal [registration] application, and the renewal [registration] and penalty fees, as set forth under Chapter 175 (relating to Fees and Penalties).

(B) If a certificate [holder] or NCT [general] registration [permit holder's registration] has been expired for one year or longer, the certificate or NCT registration [permit holder's certificate or permit] will be automatically canceled, unless an investigation is pending, and the certificate or [permit holder may not obtain a new] NCT registration may not be renewed.

(C) A person whose certificate or NCT [general] registration [permit] has expired may not engage in activities that require a certificate or NCT registration [permit] until the authorization [certificate or permit] has been renewed. Performing activities requiring a certificate or NCT registration [permit] during the period in which the authority [registration] has expired [without obtaining a new registration for the current registration period] has the same effect as, and is subject to all penalties of, practicing radiologic technology in violation of the Act.

(D) If a certificate or NCT [general] registration [permit] has been expired for one year or longer, it is considered to have been canceled, unless an investigation is pending. A new certificate or NCT [general] registration [permit] may be obtained by complying with the requirements and procedures for obtaining an original certificate or NCT registration [permit].

(2) Renewal for technologists on active military duty with expired certificate or NCT [general] registration [permit]. A holder of a certificate or NCT [general] registration [permit] that has been expired for longer than a year may file a complete application for another certificate or NCT registration [permit] of the same type as that which expired.

(A) The application shall be on official board forms and be filed with required fees. [the application and initial certification or NCT general registration permit fee.]

(B) An applicant shall be entitled to a certificate [or NCT general registration permit] of the same type as that which expired based upon the applicant's previously accepted qualification and no further qualifications or examination shall be required.

(C) The application must include a copy of the official orders or other official military documentation showing that the holder was on active duty during any portion of the period for which the applicant was last certified or registered as an NCT with the board.

(D) An applicant for a different type of certificate than that which expired must meet the requirements of this chapter generally applicable to that type of certificate.

§194.10. Retired Certificate or NCT [General] Registration [Permit].

(a) The registration fee shall not apply to retired certificate or NCT [general registration permit holders].

(b) To become exempt from the registration fee due to retirement, the individual:

(1) [the certificate or permit holder's current certificate or permit] must not be under an investigation or order with the board or otherwise be restricted; and

(2) [the certificate or permit holder] must request in writing on a form prescribed by the board for his or her certificate or NCT registration [permit] to be placed on official retired status.

(3) The following restrictions shall apply to a certificate or NCT registration placed under an [permit holders whose certificates or permits are on] official retired status:

(A) the certificate or NCT registration [permit] holder must not engage in clinical activities requiring a certificate or NCT registration [permit] in Texas or any state; and

(B) the certificate or permit holder's certificate or permit may not be endorsed to any other state.

(c) A retired certificate or NCT registration [permit] holder may return to active status by:

(1) applying to the board;

(2) paying an application fee equal to an application fee for a certificate or NCT registration [permit] holder;

(3) complying with the requirements for certificate or NCT registration [permit] renewal under the Act;

(4) providing current verifications from each state in which the certificate or NCT registration [permit] holder holds a license, certificate, permit, or registration, as applicable;

(5) providing current verifications of certification by ARRT, CBRPA, or NMTCB, as applicable; and

(6) complying with subsection (d) of this section.

(d) Licensure Committee or Executive Director Recommendations.

(1) The request of a certificate or NCT registration [permit] holder seeking a return to active status whose certificate or NCT registration [permit] has been placed on official retired status for two years or longer shall be submitted to the Licensure Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Licensure Committee, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to the following terms:

(A) completion of specified continuing education hours directly or indirectly related to the disciplines of radiologic technology and offered by an institution accredited by a regional accrediting or-

ganization such as SACS, or by JRCERT, JRCNMT, JTCCVT, CCE, ABHES, or ASRT;

(B) current certification by ARRT, CBRPA or NMTCB, as applicable;

(C) limitation and/or exclusion of the practice of the applicant to specified activities of the practice;

(D) remedial education; and

(E) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice.

(2) The request of a certificate or NCT registration [permit] holder seeking a return to active status whose certificate has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Licensure Committee of the board, for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Licensure Committee of the board, the Licensure Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Licensure Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including, but not limited to those options provided in paragraph (1)(A) - (E) of this subsection.

(e) In evaluating a request to return to active status, the Licensure Committee or the full board may require a personal appearance by the certificate or NCT registration [permit] holder at the offices of the board, and may also require a physical or mental examination by one or more physicians or other health care providers approved in advance and in writing by the executive director or the Licensure Committee, or other designee(s) determined by majority vote of the board.

(f) A retired certificate or NCT registration [permit] holder who has obtained an exemption from the renewal [registration] fee as provided for under this section, may be subject to disciplinary action under the Act, §601.302, based on unprofessional conduct if the certificate or NCT registration holder engages in activities requiring a certificate or NCT registration [permit].

(g) A retired certificate or NCT registration [permit] holder who attempts to obtain an exemption from the registration fee under this section by submitting false or misleading statements to the board shall be subject to disciplinary action pursuant to the Act, §601.302, in addition to any civil or criminal actions provided for by state or federal law.

§194.21. Scope of Practice.

(a) (No change.)

(b) LMRTs. Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, portable radiography, nuclear medicine, and/or radiation therapy procedures. However, a person holding a limited certificate in the cardiovascular category may perform radiologic procedures involving the use of contrast media and/or ionizing radiation for the purposes of imaging [diagnosing or treating] a disease or condition of the cardiovascular system. Holding a limited certificate in all categories shall not be construed to mean that the holder of the limited certificate has the rights, duties, and privileges of a general certificate holder.

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 August 20, 2019.

TRD-201902802

Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: October 6, 2019

For further information, please call: (512) 305-7016



22 TAC §194.34

The Texas Medical Board (Board) proposes new rule §194.34, concerning Exemption from Licensure for Certain Military Spouses for Medical Radiologic Technologists.

The proposed new rule is mandated by the passage of SB 1200 (86th Regular Legislative Session) and relates to exemption from licensure for certain military spouses.

New rule §194.34, Exemption from Licensure for Certain Military Spouses (regarding Medical Radiologic Technologists), allows qualified military spouses to practice medical radiological technology without obtaining a license during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas. The exemption cannot exceed three years, and practice must be authorized by the Board after verifying that the military spouse holds an active license in good standing in another state with substantially equivalent requirements for licensure as Texas.

Scott Freshour, General Counsel for the Texas Medical Board, has determined that, for each year of the first five years the new rules as proposed are in effect, the public benefit anticipated as a result of enforcing these proposed new rules will be to increase patient accessibility to properly licensed, trained, and educated providers.

Mr. Freshour has also determined that for the first five-year period these new rules as proposed are in effect there will be no fiscal impact or effect on government growth as a result of enforcing the new rules as proposed.

Mr. Freshour has also determined that for the first five-year period the new rules are in effect there will be no probable economic cost to individuals required to comply with these rules as proposed.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new rules and determined that for each year of the first five years the proposed new rules will be in effect:

(1) there will be no effect on small businesses, micro businesses, or rural communities; and

(2) the agency has considered alternative methods of achieving the purpose of the proposed new rules and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these new rules as proposed are in effect:

(1) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is none;

(2) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule is none;

(3) the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule is none; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the rule.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new rule will be in effect, there will be no effect on local economy and no effect on local employment.

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

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

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

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

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

(5) The proposed rule creates new regulations.

(6) The proposed rule does not repeal existing regulations as described above. The proposed rules do not expand or limit an existing regulation.

(7) The proposed rule does increase the number of individuals subject to the rules' applicability.

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

Comments on the proposals may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The new rule is proposed under the authority of Texas Occupations Code §153.001, which provides authority for the Board to adopt rules necessary to administer and enforce the Medical Practice Act and adopt rules necessary to regulate medical radiological technologists. The new rule is also proposed under Texas Occupations Code §55.0041, which mandates the Board to adopt rules to implement that section. No other statutes, articles or codes are affected by this proposal.

§194.34. Exemption from Licensure for Certain Military Spouses.

(a) The executive director of the Texas Medical Board must authorize a qualified military spouse to practice medical radiologic technology in Texas without obtaining a certificate or permit in accor-

dance with §55.0041(a), Texas Occupations Code. This authorization to practice is valid during the time the military service member to whom the military spouse is married is stationed at a military installation in Texas, but not to exceed three years.

(b) In order to receive authorization to practice the military spouse must:

(1) hold an active medical radiologic certificate or permit in another state, territory, Canadian province, or country that:

(A) has licensing or certification requirements that are determined by the board to be substantially equivalent to the requirements for certification in Texas; and

(B) is not subject to any restriction, disciplinary order, probation, or investigation;

(2) notify the board of the military spouse's intent to practice in Texas on a form prescribed by the board; and

(3) submit proof of the military spouse's residency in this state, a copy of the spouse's military identification card, and proof of the military member's status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(c) While authorized to practice medical radiologic technology in Texas, the military spouse shall comply with all other laws and regulations applicable to the practice of medical radiologic technology in Texas.

(d) Once the board receives the form containing notice of a military spouse's intent to practice in Texas, the board will verify whether the military spouse's certificate or permit in another state, territory, Canadian province, or country is active and in good standing. Additionally, the board will determine whether the licensing or certification requirements in that jurisdiction are substantially equivalent to the requirements for certification in Texas.

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

Filed with the Office of the Secretary of State on August 21, 2019.

TRD-201902843

Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: October 6, 2019

For further information, please call: (512) 305-7016



PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.1

The Texas Board of Physical Therapy Examiners proposes amending 22 TAC §322.1, Provision of Services, pursuant to HB 29 amendments to Sec. 453.301, Occupations Code during the 86th Legislative Session.

The amendments are proposed in order to delineate the qualifications beyond licensure, additional requirements, and limita-

tions for a physical therapist to treat a patient without a referral from a qualified healthcare practitioner.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period these amendments are in effect there would be no increase or loss of revenue to the state. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period these amendments are in effect the public benefit will be increasing consumer access to physical therapy services. There will be no economic cost to physical therapists who will provide treatment without a referral as no new fee will be imposed.

Local Employment Economic Impact Statement

The amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

During the first five-year period these amendments are in effect, the impact on government growth is as follows: the proposed amendment will neither create nor eliminate a government program; will neither create new employee positions nor eliminate existing employee positions; will neither increase nor decrease future legislative appropriations to the agency; will neither require an increase nor a decrease in fees paid to the agency; will amend an existing regulation by authorizing a physical therapist to treat a patient without a referral from a qualified healthcare practitioner with certain requirements, limitations and restrictions; will limit the number of physical therapists subject to the rule's applicability as certain qualifications beyond licensure must be met; and will neither positively nor adversely affect the state's economy.

Takings Impact Assessment

The proposed amendments will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendments will not increase costs to regulated persons and are necessary to implement legislation that amended Sec. 453.301, Occupations Code during the 86th Legislative Session.

Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must

be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

Statutory Authority

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Cross-reference to Statute

The proposed amendments implement amendments to Sec. 453.301, Occupations Code during the 86th Legislative Session.

§322.1. *Provision of Services.*

(a) Initiation of physical therapy services.

(1) Referral requirement. Except as authorized by paragraph (2) of this subsection, a [A] physical therapist is subject to discipline from the board for providing physical therapy treatment without a referral from a qualified healthcare practitioner licensed by the appropriate licensing board, who within the scope of the professional licensure is authorized to prescribe treatment of individuals. The list of qualifying referral sources includes physicians, dentists, chiropractors, podiatrists, physician assistants, and advanced nurse practitioners.

(2) Exceptions to referral requirement.

(A) - (C) (No change.)

(D) A PT may treat a patient for an injury or condition without a referral for not more than 10 consecutive business days if the PT:

(i) has been licensed to practice physical therapy for at least one year;

(ii) is covered by professional liability insurance in the minimum amount of \$100,000 per claim and \$300,000 aggregate per year; and

(iii) either:

(I) possesses a doctoral degree in physical therapy from:

(-a-) a program that is accredited by the Commission on Accreditation in Physical Therapy Education; or

(-b-) an institution that is accredited by an agency or association recognized by the United States secretary of education; or

(II) has completed at least 30 CCUs in the area of differential diagnosis.

(E) A PT who has completed a residency or fellowship may treat a patient without a referral for not more than 15 consecutive business days if he possesses a doctoral degree as described in subparagraph (D)(iii)(I)(-a-) or (-b-) of this paragraph and has satisfied the conditions set forth in subparagraph (D)(i) and (ii) of this paragraph.

(F) A PT who treats a patient without a referral under subparagraph (D) or (E) of this paragraph must obtain a signed disclosure on a form prescribed by the board prior to the initiation of treatment. The disclosure form will be made available on the board's website.

{(D) Prior referrals. A physical therapist may treat a patient for an injury or condition that is the subject of a prior referral if all of the following conditions are met-

{(i) The physical therapist must notify the original referring healthcare personnel of the commencement of therapy by telephone within five days, or by letter postmarked within five business days;

{(ii) The physical therapy provided must not be for more than 20 treatment sessions or 30 consecutive calendar days, whichever occurs first. At the conclusion of this time of treatment, the physical therapist must confer with the referring healthcare personnel before continuing treatment;

{(iii) The treatment can only be provided to a client/patient who received the referral not more than one year previously; and

{(iv) The physical therapist providing treatment must have been licensed for one year. The physical therapist responsible for the treatment of the patient may delegate appropriate duties to another physical therapist having less than one year of experience or to a physical therapist assistant. A physical therapist licensed for more than one year must retain responsibility for and supervision of the treatment.

(3) (No change.)

(b) - (e) (No change.)

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

Filed with the Office of the Secretary of State on August 26, 2019.

TRD-201902885

Ralph A. Harper

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: October 6, 2019

For further information, please call: (512) 305-6900



CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.6, §329.7

The Texas Board of Physical Therapy Examiners proposes amending §329.6, Licensure by Endorsement, and §329.7, Exemptions from Licensure, pursuant to SB 1200 addition of Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF MILITARY SPOUSE to Chapter 55, Occupations Code during the 86th Legislative Session.

The amendment is proposed in order to authorize a military spouse to engage in the practice of physical therapy without obtaining a license as a physical therapist or physical therapist assistant if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the licensure in this state and the military service member to whom the military spouse is married is stationed at a military installation in this state.

The amendments clarify that a military spouse may qualify to practice under the exemptions set forth in §329.7, Exemptions from Licensure, and may qualify, along with veterans, for a Compact privilege to practice in this state. The reporting requirements for both the military spouse and the agency and the time limit for authorization are delineated. Additionally, the method for determining substantial equivalent licensing requirements and

verification of licensure in another jurisdiction are identified. The requirements for the licensee to provide a list of the jurisdictions in which a license is or has been held, and for the licensee to comply with the laws and regulations of physical therapy are added to apply to all categories of licensure exemption in this section.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period these amendments are in effect there would be no loss of revenue as a military spouse already qualifies for a waiver of application fees when endorsing from another jurisdiction. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period these amendments are in effect the public benefit will be increasing consumer access to physical therapy services by reducing regulatory barriers to interstate mobility of qualified military spouses. There will be no economic cost to individuals who are exempt from obtaining licensure as a physical therapist or physical therapist assistant.

Local Employment Economic Impact Statement

The amendments are not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, neither an economic impact statement nor a regulatory flexibility analysis are required.

Government Growth Impact Statement

During the first five-year period this amendment is in effect, the impact on government growth is as follows: the proposed amendments will neither create nor eliminate a government program; will neither create new employee positions nor eliminate existing employee positions; will neither increase nor decrease future legislative appropriations to the agency; will neither require an increase nor a decrease in fees paid to the agency; will amend existing regulations by expanding the categories of licensees that are exempt from licensure in this state; will neither increase nor decrease the number of individuals subject to the rule's applicability; and will neither positively nor adversely affect the state's economy.

Takings Impact Assessment The proposed rule amendment will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendments will not increase costs to regulated persons and are necessary to implement legislation that amended Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF MILITARY SPOUSE of Chapter 55, Occupations Code during the 86th Legislative Session.

Public Comment

Comments on the proposed amendments may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

Statutory Authority

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Cross-reference to Statute

The proposed amendments implement Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF MILITARY SPOUSE of Chapter 55, Occupations Code during the 86th Legislative Session.

§329.6. Licensure by Endorsement.

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

(c) Licensure of a Military Service Member, Military Veteran, or Military Spouse. The board will waive the application fee and will expedite the issuance of a license by endorsement to a military service member, military veteran, or spouse of a military service member. The applicant must provide official documentation of active duty status or veteran status or the active duty status of the spouse.

(1) A military spouse may qualify to practice in this state under the exemption described in §329.7(b)(5) Exemptions from Licensure if the military service member to whom a military spouse is married is stationed at a military installation in this state.

(2) A military spouse or veteran may qualify to practice in this state under a Compact privilege as described in CHAPTER 348. PHYSICAL THERAPY LICENSURE COMPACT.

(d) (No change.)

§329.7. Exemptions from Licensure.

(a) The following categories of individuals practicing physical therapy in the state are exempt from licensure by the board.

(1) A person practicing physical therapy in the U.S. US armed services, U.S. US Public Health Service, or Veterans Administration in compliance with federal regulations for licensure of health care providers; and

(2) A person who is licensed in another jurisdiction of the U.S. US and who, by contract or employment, is practicing physical therapy in this state for not more than 60 days in a 12 month period for an athletic team or organization or a performing arts company temporarily competing or performing in this state.

(b) The following categories of individuals practicing physical therapy in the state are exempt from licensure by the board and must notify the board of their intent to practice in the state.

(1) A physical therapist who is licensed in good standing in another jurisdiction of the U.S. US if the person is engaging, for not more than 90 days in a 12 month period and under the supervision of a physical therapist licensed in this state, in a special project or clinic required for completion of a post-professional degree in physical therapy from an accredited college or university.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice;

(ii) the name of the institution or facility in which the individual will be practicing; ~~and~~

~~and~~ (iii) the name of the supervising physical therapist; ~~and~~

~~and~~ (iv) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the practice.

(2) A physical therapist or a physical therapist assistant who is licensed in good standing in another jurisdiction of the U.S. ~~US~~ or authorized to practice physical therapy without restriction in another country if the person is engaging in patient contact and treatment as either an instructor or participant while attending an educational seminar or activity in this state for not more than 60 days in a 12 month period.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the educational activity;

(ii) the name of the course or activity sponsor; ~~and~~

(iii) the location of the educational activity; ~~and~~

(iv) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the educational activity.

(3) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. ~~US~~ who is practicing physical therapy for not more than 60 days during a declared local, state, or national disaster or emergency.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice; ~~and~~

(ii) the name of the facility in which the individual will be practicing; ~~and~~

(iii) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the practice.

(4) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. ~~US~~ who is displaced from the person's residence or place of employment due to a declared local, state, or national disaster and is practicing physical therapy in this state for not more than 60 days after the date the disaster is declared.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice; ~~and~~

(ii) the name of the facility in which the individual will be practicing; ~~and~~

(iii) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the practice.

(5) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. who is a military spouse for the period during which the military service member to whom the military spouse is married is stationed at a military installation in Texas.

(A) The military spouse must submit written notification including the following:

(i) proof of the military spouse's residency in this state;

(ii) a copy of the military spouse's military identification card; and

(iii) a list of the jurisdictions in which the military spouse has held or currently holds a license.

(B) The board will issue a written confirmation stating that:

(i) licensure in other jurisdictions has been verified;

(ii) the military spouse is authorized to practice physical therapy in the state; and

(iii) authorization does not exceed three years from the date the confirmation is received.

(c) For individuals exempt from licensure under (b), the following applies:

(1) Any jurisdiction of the U.S. that licenses physical therapists and physical therapist assistants is deemed to have substantially equivalent requirements for licensure;

(2) Verification of licensure in other jurisdictions may be through online primary source verification; and

(3) The individual must comply with all of the laws and regulations applicable to the provision of physical therapy in Texas.

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

Filed with the Office of the Secretary of State on August 26, 2019.

TRD-201902887

Ralph A. Harper

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: October 6, 2019

For further information, please call: (512) 305-6900



CHAPTER 341. LICENSE RENEWAL

22 TAC §341.7

The Texas Board of Physical Therapy Examiners proposes amending §341.7, Restrictions on License Renewal and Restoration, pursuant to SB 37 amendments to CHAPTER 56. ACTION AGAINST RECIPIENTS OF STUDENT FINANCIAL

ASSISTANCE, Occupations Code during the 86th Legislative Session.

The amendment is proposed in order to eliminate default on a student loan as a restriction for obtaining, renewing, or restoring a physical therapy license.

Fiscal Note

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy & Occupational Therapy Examiners, has determined that for the first five-year period this amendment is in effect there may be a negligible gain of revenue to the state government through fees associated with allowing individuals with a student loan default to obtain, renew, or restore a physical therapy license. No fiscal implication to units of local government is anticipated as a result of enforcing or administering the rules.

Public Benefits and Costs

Mr. Harper has also determined that for the first five-year period this amendment is in effect the public benefit will be that physical therapists and physical therapist assistants who are otherwise qualified and competent will be allowed to obtain, renew, or restore a physical therapy license and provide physical therapy services. There will be a nominal economic cost to individuals who apply for or renew their physical therapy license in the form of an application or renewal fee.

Local Employment Economic Impact Statement

The amendment is not anticipated to impact a local economy, so a local employment economic impact statement is not required.

Small and Micro-Businesses and Rural Communities Impact

Mr. Harper has determined that there will be no costs or adverse economic effects to small or micro-businesses or rural communities; therefore, an economic impact statement or regulatory flexibility analysis is not required.

Government Growth Impact Statement

During the first five-year period this amendment is in effect, the impact on government growth is as follows: the proposed amendment will neither create nor eliminate a government program; will neither create new employee positions nor eliminate existing employee positions; will neither increase nor decrease future legislative appropriations to the agency; will neither require an increase nor a decrease in fees paid to the agency; will not create a new regulation but does repeal an existing regulation that restricts licensing of an individual who has defaulted on a student loan; will neither increase nor decrease the number of individuals subject to the rule's applicability; and will neither positively nor adversely affect the state's economy.

Takings Impact Assessment

The proposed rule amendment will not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

Requirement for Rule Increasing Costs to Regulated Persons

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to this proposed rule because the amendment will not increase costs to regulated persons and are necessary to implement legislation that amended CHAPTER 56. ACTION AGAINST RECIPIENTS OF STUDENT

FINANCIAL ASSISTANCE, Occupations Code during the 86th Legislative Session.

Public Comment

Comments on the proposed amendment may be submitted to Karen Gordon, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: karen@ptot.texas.gov. Comments must be received no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Cross-reference to Statute

The proposed amendment implements CHAPTER 56. ACTION AGAINST RECIPIENTS OF STUDENT FINANCIAL ASSISTANCE, Occupations Code as amended during the 86th Legislative Session.

§341.7. Restrictions on License Renewal and Restoration.

[(a) The board will not renew a license if a licensee has defaulted on a loan from the Texas Guaranteed Student Loan Corporation (TGSLC). Upon notice from TGSLC that a repayment agreement has been established, the license shall be renewed.]

[(b)] The board will not renew a license if a licensee has defaulted on court or attorney general's notice of child support. Upon receipt of notification that a repayment agreement has been established, the license shall be renewed.

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 August 26, 2019.

TRD-201902886

Ralph A. Harper
Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER N. ADMINISTRATOR'S LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §745.8914, concerning How Does Licensing Determine Whether Another State's Licensing Requirements are Substantially Equivalent to the Requirements for an Administrator's License under this subchapter; and §745.9030, concerning When May a Military

Spouse that has a Substantially Equivalent License in Another State Act as an Administrator Without Obtaining a License under this subchapter, in Title 26, Texas Administrative Code, Chapter 745, Subchapter N, Administrator's Licensing.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement Senate Bill (S.B.) 1200, 86th Legislature, Regular Session, 2019, which adds §55.0041 to the Texas Occupations Code to recognize certain out-of-state licenses for military spouses. The proposed rules allow a military spouse to act as an administrator for a general residential operation, child-placing agency, or both without obtaining an administrator's license from Child Care Licensing (CCL). The proposed rules require the military spouse to be currently licensed in good standing by another state that has licensing requirements substantially equivalent to the requirements for a CCL administrator's license in Texas. CCL regulates administrator's licenses and promulgates rules related to that regulation under Chapter 43, Texas Human Resources Code.

SECTION-BY-SECTION SUMMARY

Proposed new §745.8914 describes the criteria that CCL will review and evaluate to determine whether another state's licensing requirements are substantially equivalent to the requirements for an administrator's license in Texas. This includes evaluating whether an examination is required and whether the applicant is required to meet full-time experience qualifications and education qualifications, and the scope of work to be performed under the license are the same.

Proposed new §745.9030(a) establishes the requirements a military spouse that has a substantially equivalent license in another state must meet to qualify to act as an administrator without obtaining a license in Texas.

Proposed new §745.9030(b) describes the information that the military spouse must submit so that CCL can evaluate the other state's requirements for a license.

Proposed new §745.9030(c) describes how CCL will verify the information submitted, determine whether another state's licensing requirements are substantially equivalent to the requirements for an administrator's license in Texas, and verify that the military spouse is licensed in good standing.

Proposed new §745.9030(d) describes the process for notifying the military spouse on whether CCL will approve or deny the spouse to act as an administrator without having a license from CCL.

Proposed new §745.9030(e) specifies the laws and regulations that the military spouse who CCL approved to act as an administrator must comply with and when approval to act expires.

Proposed new §745.9030(f) clarifies that the approval to act as an administrator may be revoked in the same manner as a license for an administrator may be revoked.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do 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 rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create new rules;
- (6) the proposed rules implement legislation that requires a state agency to recognize an out-of-state occupational license for a military spouse if certain criteria are met. Otherwise, the proposed rules will not expand, limit, or repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules 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 proposed rules do not apply to small or micro-businesses or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Jean Shaw, Associate Commission for Child Care Licensing, has determined that for each year of the first five years the rules are in effect, the public benefit will be military spouses that transfer to Texas will have another faster alternative (versus obtaining an administrator's license from CCL) to act as an administrator for a general residential operation, child-placing agency, or both, which will allow military spouses to begin work as soon as possible under certain circumstances.

Trey Wood has determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply. The proposed rules waive application fees for military spouses, that have a substantially equivalent license in another state, seeking an alternative administrator's license in Texas.

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

Questions about the content of this proposal may be directed to Gerry Williams at (512) 438-5559.

Written comments on the proposal may be submitted to Gerry Williams, Rules Developer, Child Care Licensing, Health and

Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by e-mail to CCLrules@hhsc.stat.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 the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or e-mailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 19R055" in the subject line.

DIVISION 1. OVERVIEW OF ADMINISTRATOR'S LICENSING

26 TAC §745.8914

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

Texas Human Resources Code §43.005 includes HHSC's authority to adopt rules to administer provisions of Chapter 43, Texas Human Resources Code, concerning the regulation of child-care and child-placing agency administrators.

The new section implements new Texas Occupations Code, §55.0041, which was created by S.B. 1200 in the 86th Legislature, Regular Session, 2019.

§745.8914. How does Licensing determine whether another state's licensing requirements are substantially equivalent to the requirements for an administrator's license under this subchapter?

We will review and evaluate the following criteria when determining whether another state's licensing requirements are substantially equivalent to the requirements for an administrator's license under this subchapter and Chapter 43 of the Texas Human Resources Code:

(1) Whether the other state requires an applicant to pass an examination that demonstrates competence in the field of child care administration or placing children in residential settings, as appropriate, in order to obtain the license;

(2) Whether the other state requires an applicant to meet the full-time experience qualifications, described in this division, in order to obtain the license;

(3) Whether the other state requires an applicant to meet the education qualifications, described in this division, in order to obtain the license; and

(4) The other state's license requirements, including the scope of work authorized to be performed under the license issued by the other 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 August 26, 2019.
TRD-201902897

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: October 6, 2019
For further information, please call: (512) 438-5559

DIVISION 5. MILITARY MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

26 TAC §745.9030

STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

Texas Human Resources Code §43.005 includes HHSC's authority to adopt rules to administer provisions of Chapter 43, Texas Human Resources Code, concerning the regulation of child-care and child-placing agency administrators.

The new section implements new Texas Occupations Code, §55.0041, which was created by S.B. 1200 in the 86th Legislature, Regular Session, 2019.

§745.9030. When may a military spouse who has a substantially equivalent license in another state act as an administrator without obtaining a license under this subchapter?

(a) If you are a military spouse, you may act as an administrator for a general residential operation, child-placing agency, or both, without obtaining an administrator's license under this subchapter and Chapter 43 of the Texas Human Resources Code, for up to three years if we determine that you:

(1) Are currently licensed in good standing by another state that has licensing requirements that are substantially equivalent to the requirements for an administrator's license under this subchapter; and

(2) Meet the other requirements in this section.

(b) In order for us to evaluate whether you are currently licensed in another state with requirements that are substantially equivalent to the requirements for an administrator's license under this subchapter, you must submit:

(1) An Application for a Child-Care Administrator License or a Child-Placing Agency Administrator License and complete Sections I, VIII, except you must attach a copy of your valid military identification card to demonstrate your status as a military spouse, and X;

(2) A letter indicating your intent to act as an administrator for a general residential operation, child-placing agency, or both in this state;

(3) Documentation of your residency in this state;

(4) Proof of your administrator's license or any other professional or occupational license that you currently hold in the other state; and

(5) A copy of the regulations pertaining to the current license in the other state or a web address where the regulations can be found.

(c) Once we receive the application and the additional documentation, we will:

(1) Verify that the application is complete and the documentation is accurate;

(2) Determine whether the requirements for the license in the other state are substantially equivalent to the requirements for an administrator's license according to §745.8914 of this subchapter (relating to How does Licensing determine whether another state's licensing requirements are substantially equivalent to the requirements for an administrator's license under this subchapter?); and

(3) Verify that you are licensed in the other state and are in good standing, including that:

(A) Your license in the other state is valid, active, and current (is not pending renewal and has not expired); and

(B) There is no current disciplinary action or corrective action pending or attached to the license.

(d) After completing the actions in subsection (c) of this section, we will notify you whether we approve or deny you to act as an administrator for a general residential operation, child-placing agency, or both without having an administrator's license under this subchapter.

(e) If we approve you to act as an administrator for a general residential operation, child-placing agency, or both:

(1) You must comply with all other applicable laws and regulations, including those relating to:

(A) Administrator's Licensing in this subchapter and Chapter 43 of the Texas Human Resources Code;

(B) Subchapter F of this chapter (relating to Background Checks) when employed by a general residential operation or a child-placing agency; and

(C) Minimum standards for general residential operations and child-placing agencies; and

(2) Our approval for you to act as an administrator expires on the earlier of:

(A) The date your spouse is no longer stationed at a military installation in this state; or

(B) The third anniversary of the date when we notified you that you may act as an administrator for a general residential operation, child-placing agency, or both.

(f) We may revoke our approval for you to act as an administrator for any reason noted in §745.9037 of this subchapter (relating to Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?).

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 August 26, 2019.

TRD-201902898

Karen Ray
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: October 6, 2019

For further information, please call: (512) 438-5559



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.4

The Texas Board of Criminal Justice proposes amendments to §151.4, concerning Public Presentations and Comments to the Texas Board of Criminal Justice. The amendments are proposed in conjunction with a proposed rule review of §151.4 as published in another section of the *Texas Register*. The proposed amendments are minor wording changes and are not substantive.

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 enhance clarity and public understanding. 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 Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@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 §§492.001, 492.013, 551.001-.146; Texas Penal Code §§30.06, 30.07.

Cross Reference to Statutes: None.

§151.4. Public Presentations and Comments to the Texas Board of Criminal Justice.

(a) Policy. The Texas Board of Criminal Justice (TBCJ or board) is committed to providing access and opportunity for public presentations and comments as provided by ~~for in~~ this section. Individuals ~~Persons~~ not employed by or under contract with the Texas Department of Criminal Justice (TDCJ), who wish to have items placed on the board's posted agenda, shall follow the procedures set forth in subsection ~~(g)~~ ~~(h)~~ of this section. Public presentations and comments shall be:

(1) subject to the requirements and restrictions of ~~subsections (b), (c), (d), (e), and (f) of~~ this section;

(2) pertinent to issues under the jurisdiction of the board, as determined by the board chairperson ~~chairman~~ and the TDCJ general counsel; and

(3) pertinent to policies, procedures, standards, and rules of the TDCJ. Disputes that are appropriately the subject of the em-

ployee grievance system, the employee disciplinary system, the offender grievance system, the offender disciplinary system, or comments regarding pending litigation shall be addressed through those processes.

(b) Definitions.

(1) Public presentations are presentations made by the public to the TBCJ regarding topics posted on a board meeting agenda that has been filed with and published by the *Texas Register* and as provided for in subsection (c) of this section.

(2) Public comments are comments made by the public on non-posted agenda topics and as provided for in subsection (d) of this section.

(c) Public presentations. Individuals [Persons] who desire to make public presentations to the TBCJ on posted agenda topics shall provide, on the date of the meeting, a completed registration card to onsite board office staff at least 10 minutes prior to the meeting's posted start time. Registration cards shall be made available at the entry to the room where the board's scheduled meeting will be [is] held.

(1) Pre-registration is available for public presentations through first class mail at P.O. Box 13084, Austin, Texas 78711, or email at tbcj@tdcj.texas.gov. Pre-registration shall be received by the board office staff at least [~~no later than~~] four calendar days prior to the posted meeting date of the presentation. In addition to the information required in subsection (c)(2) of this section, pre-registration submissions shall include appropriate contact information, such as a daytime phone number or email address, for the individual who is registering to speak.

(2) Registration cards and pre-registration submissions shall include [disclose]:

(A) the name of the individual [person] who will make the presentation;

(B) a statement as to whether the individual [person] is being remunerated for the presentation and if so, by whom; and if applicable, the name of the individual [person] or entity on whose behalf the presentation will be made;

(C) a statement as to whether the presenter has registered as a lobbyist in relation to the agenda topic being addressed;

(D) a reference to the agenda topic on which the individual [person] wants to present;

(E) an indication as to whether the presenter will speak for or against the proposed agenda topic; and

(F) a statement verifying that all information that will be presented is factual, true, and correct to the best of the speaker's knowledge.

(3) The TBCJ chairperson [chairman] shall have discretion in setting reasonable limits on the time allocated for public presentations on posted agenda topics. If several individuals [persons] have registered to address the board on the same agenda topic, it shall be within the discretion of the board chairperson [chairman] to request that those individuals [persons] select a representative amongst themselves to express such remarks or limit their presentations to an expression of support for views previously articulated.

(4) The TBCJ chairperson [chairman] shall provide an opportunity for public presentations to occur prior to the board taking action on the topic denoted on the presenter's registration card. If an individual [a person] who is registered to speak on a posted agenda item

is not present when called upon, that individual's [person's] opportunity to speak prior to action being taken on that topic shall be forfeited.

(5) A presenter may submit documentation pertaining to the public presentation to the board office staff. Documents shall be submitted at least [~~no later than~~] three calendar days prior to the posted meeting date when the presentation is to occur. Such documentation shall then be distributed to the board. Any documentation submitted after the above-referenced date will not be distributed to the board until after the presentation. A minimum of 12 copies of any such documentation shall be submitted to the board office staff or distribution may not occur.

(d) Public comments.

(1) Twice a year, at the second and fourth regular called meetings of the board, an opportunity shall be provided for public comment on issues that are not part of the TBCJ's posted agenda but are within the board's jurisdiction. Special called meetings are not counted toward the requirement of this subsection.

(2) Individuals [Persons] who desire to make public comments to the TBCJ at these meetings shall provide, on the date of the meeting, a completed registration card to onsite board office staff at least 10 minutes prior to the meeting's posted start time. Registration cards shall be made available at the entry to the room where the board's scheduled meeting will be [is] held.

(3) Pre-registration is available for public comments through first class mail at P.O. Box 13084, Austin, Texas 78711, or email at tbcj@tdcj.texas.gov. Pre-registration shall be received by board office staff no earlier than the first day of the month preceding the board meeting for which the registration is intended and at least [~~no later than~~] four calendar days prior to the posted meeting date when the comments are to occur. In addition to the information required in subsection (d)(4) of this section, pre-registration submissions shall include appropriate contact information, such as a daytime phone number or email address, for the individual who is registering to speak.

(4) Registration cards and pre-registration submissions shall include [disclose]:

(A) the name of the individual [person] who will make the comments;

(B) a statement as to whether the individual [person] is being remunerated for the comments and if so, by whom; and, if applicable, the name of the individual [person] or entity on whose behalf the comments will be made;

(C) a statement as to whether the presenter has registered as a lobbyist in relation to the topic being addressed;

(D) the topic on which the individual [person] shall speak and whether the individual [person] will speak for or against the topic; and

(E) a statement verifying that all information that will be presented is factual, true, and correct to the best of the speaker's knowledge.

(5) The TBCJ chairperson [chairman] shall have discretion in setting reasonable limits on the time allocated for public comments. If several individuals [persons] have registered to address the board on the same topic, it shall be within the discretion of the board chairperson [chairman] to request that those individuals [persons] select a representative amongst themselves to express such comments, or limit their comments to an expression of support for views previously articulated.

(6) Public comments shall be heard just prior to the conclusion of the board meeting, with deviation from this practice within

the discretion of the board chairperson [chairman]. If an individual [a person] who is registered to speak on a non-posted topic is not present when called upon, that individual [person] shall be called once more following all other registered speakers. If that individual [person] is not present at that time, their opportunity to speak at that meeting shall be forfeited.

(7) A presenter may submit documentation pertaining to the public comments to the board office staff. Documentation shall be submitted at least [no later than] three calendar days prior to the posted meeting date when the comments are to occur. Such documentation shall then be distributed to the board. Any documentation submitted after the above-referenced date will not be distributed to the board until after the comments. A minimum of 12 copies of any such documentation shall be submitted to the board office staff or distribution may not occur.

(e) Disability accommodations. Individuals [Persons] with disabilities who have special communication or accommodation needs and who plan to attend a meeting may contact the board office at 512-475-3250. Requests for accommodation shall be made at least two days prior to a posted meeting. The TBCJ shall make every reasonable effort to accommodate these needs.

(f) Conduct and decorum. The TBCJ shall receive public presentations and comments as authorized by this section, subject to the following additional guidelines:

(1) Due to requirements of the *Open Meetings Act*, questions shall only occur on public presentations as defined in subsection (b) of this section as they are associated with posted agenda topics. Questions shall be reserved for board members and staff recognized by the board chairperson [chairman].

(2) Presentations and comments shall remain pertinent to the issues denoted on the registration cards.

(3) An individual [A presenter] who is determined by the board chairperson [chairman] to be disrupting a meeting shall immediately cease the disruptive activity or leave the meeting room if ordered to do so by the board chairperson [chairman]. If the disruptive activity continues, the individual may be subject to removal from the meeting room.

(4) A presenter may not assign a portion of his or her allotted presentation time to another speaker.

(5) Signs and placards shall not be carried or displayed in the meeting room.

(g) Requests for issues to be placed on an agenda. Individuals [Persons] not employed by or under contract with the TDCJ who wish to propose an agenda item for discussion at a TBCJ meeting shall address the request in writing to the chairperson [chairman], Texas Board of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, or email at tbcj@tdcj.texas.gov. Such requests shall be titled [] "Proposed Agenda Topic" and shall be submitted no later than the first day of the month preceding the board meeting for which the request is intended. Such requests are subject to the requirements of the registration card in subsection (c) of this section. The decision as to whether to calendar a matter for discussion before the TBCJ, a board committee, a board liaison, or with a designated staff member shall be within the discretion of the board chairperson [chairman]. Public presentations on topics placed on a board agenda, at the request of an individual, shall be in accordance with subsection (c) of this section.

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

Filed with the Office of the Secretary of State on August 26, 2019.

TRD-201902877

Sharon Howell
General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: October 6, 2019

For further information, please call: (936) 437-6700



37 TAC §151.77

The Texas Board of Criminal Justice proposes amendments to §151.77, concerning Purchasing and Contracting with Historically Underutilized Businesses. The amendments are proposed in conjunction with a proposed rule review of §151.77 as published in another section of the *Texas Register*. The proposed amendments are necessary to update the subchapter because the rules of Comptroller of Public Accounts, upon which this rule is based, were reorganized. The proposed amendments here reflect that reorganization and minor formatting changes have been made.

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 have an accurate reflection of the location of the rules of the Comptroller of Public Accounts regarding the use of historically underutilized businesses. 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 Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@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 §§492.013, 493.012, 2161.003.

Cross Reference to Statutes: None.

§151.77. *Purchasing and Contracting with Historically Underutilized Businesses [(HUBs)].*

(a) The Texas Board of Criminal Justice (TBCJ) hereby adopts by reference the rules of the Texas Comptroller of Public Accounts codified in 34 Texas Administrative Code, Part 1, Chapter 20, Subchapter D, Division 1 [Subchapter B], relating to the Historically Underutilized Business (HUB) [HUB] Program. The Texas Department of Criminal Justice shall comply with these rules and Texas Government Code §493.012.

(b) It is the intent of the TBCJ that all contracts for construction projects and for the purchase of goods and services be awarded in compliance with the applicable Texas purchasing laws, the *Texas Constitution*, and the *United States Constitution*. No preference shall be provided to a business~~;~~ except as provided by Texas Government Code~~;~~ §§2155.441 - 2155.453.

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 August 26, 2019.

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Sharon Howell

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (936) 437-6700



CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.37

The Texas Board of Criminal Justice proposes amendments to §163.37, concerning Reports and Records. The amendments are proposed in conjunction with a proposed rule review of §163.37 as published in another section of the *Texas Register*. The proposed amendments reflect the recodification of the Texas Code of Criminal Procedure and otherwise the minor changes make no substantive change.

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 accurately cite to the Texas Code of Criminal Procedure. 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 Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@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 §§492.013, 509.003.

Cross Reference to Statutes: None.

§163.37. Reports and Records.

(a) Case Records. Each community supervision and corrections department [Community Supervision and Corrections Department] (CSCD) director [directors] shall develop and maintain a case record management system for offenders supervised [receiving any type of supervision] by the CSCD. Each case record shall contain:

(1) the [a] court order placing the person on community supervision citing all conditions of community supervision;

(2) a chronological listing of all supervision case activity [significant actions], decisions, services rendered, and assessments;

(3) a [written] criminal history record or summary issued by a law enforcement agency;

(4) periodic evaluations;

(5) if required, a pre-sentence investigation report (PSIR) or post-sentence investigation report; and

(6) other documents or information related to the defendant [as] deemed appropriate by the community supervision officer or CSCD director.

(b) Case Record Confidentiality. Confidentiality of case records shall be maintained in accordance with federal and state laws. Confidential [items relating to] medical and psychological information [contained in the case record] shall be handled in accordance with 37 Texas Administrative Code §163.41~~;~~ relating to Medical and Psychological Information. Information shall [only] be released only under [the] circumstances authorized by law or as directed by the court.

(c) Pre- and Post- Sentence Investigation Reports (Reports)~~;~~ Unless waived by the defendant, a PSIR shall be completed before the imposition of a sentence and in accordance with the Texas Code of Criminal Procedure, art. 42A, Subchapter F [art. 42-12, §§9 and 9A]. If a PSIR was not completed, a post-sentence [post sentence] investigation report may be prepared, if directed by the judge, in accordance with Texas Code of Criminal Procedure, art. 42A.259 [art. 42-12, §9(k)]. The reports~~;~~ and the information obtained in connection with the reports [them], are confidential and may be released only to those persons and under those circumstances as authorized by Texas Code of Criminal Procedure, art. 42A.256 [art. 42-12, §§9 or 9A]. Information contained in the reports may be disclosed to the Department of Family and Protective Services to the extent that such information discloses that a child's physical or mental health or welfare has been adversely affected by abuse or neglect. Copies of the completed reports shall be maintained in a defendant's case file and made available for periodic audits, reviews, or inspections by the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) staff.

(d) PSIR Format. The TDCJ CJAD format shall be used for preparing PSIRs. A different format may be used if the content requirements comply with Texas Code of Criminal Procedure, art. 42A.253 [art. 42-12, §§9 and 9A] and the format is approved by both the TDCJ CJAD and the court having jurisdiction over the defendant.

(e) Transfer to the TDCJ. Upon the revocation of community supervision or an adjudication of guilt, the CSCD shall forward to the county, for inclusion in the defendant's penitentiary packet, a copy of the defendant's community supervision conditions, and if prepared, a copy of the victim's impact statement, and a copy of the pre- or post-sentence investigation report. The CSCD also shall [also] forward any additional information that was prepared for a revocation or other hearing and information updating the PSIR.

(f) Interstate Transfer. CSCD directors shall comply with the [use] uniform interstate transfer procedures and obtain the approval of [as provided by and approved by] the TDCJ Interstate Compact Of-

file for an interstate transfer of supervision in accordance with Texas Government Code, Chapter 510 and the Interstate Compact for Adult Offender Supervision Rules.

(g) Intrastate Transfer. Each CSCD director [directors] shall comply with the [use] uniform transfer procedures in accordance with 37 Texas Administrative Code §163.35(c)(8)[§163.35(10), relating to Supervision].

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 August 26, 2019.

TRD-201902883

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: October 6, 2019

For further information, please call: (936) 437-6700



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.5

The Texas Board of Occupational Therapy Examiners proposes new rule §364.5, concerning recognition of out-of-state license of military spouse. The new rule is proposed to add provisions to the Occupational Therapy Rules concerning the recognition of out-of-state licenses of military spouses as required by SB 1200 of the 86th Regular Legislative Session.

New rule §364.5 would add to the Occupational Therapy Rules provisions concerning the information a military spouse seeking recognition of the out-of-state license must submit to the Board and the conditions under which the military spouse may practice in the state once the individual has received confirmation from the Board that the military spouse is authorized to engage in the practice of occupational therapy. The proposal includes further provisions pursuant to SB 1200.

FISCAL NOTE

Ralph Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed new rule would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rule as the changes do not impose a cost.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the new rule would not impact a local economy as the proposed rule concerns the reduction of occupational therapy regulations and does not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Harper has determined that for each of the first five years the proposed new rule would be in effect, the public benefit anticipated as a result of enforcing the rule would be the reduction of occupational therapy regulations. There would be no anticipated economic cost to persons required to comply with the proposed new rule.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed new rule concerns the reduction of occupational therapy regulations and does not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the proposed new rule.

TAKINGS IMPACT ASSESSMENT

The proposed rule would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed new rule's impact on government growth during the first five years the rule would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency as military spouses licensed in another jurisdiction may already have initial license fees waived as required by previous legislation; would create a new regulation concerning the recognition of an out-of-state license of a military spouse; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to the rule's applicability as this is a proposed new rule; and would neither positively nor adversely affect this state's economy as military spouses licensed in another jurisdiction may already have initial licensing fees waived as required by previous legislation.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed new rule section because the rule does not impose a cost, does not increase costs to regulated persons, and because the Board is required by SB 1200 to adopt rules to implement the legislation.

PUBLIC COMMENT

Comments on the proposed new rule may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed new rule is published in the *Texas Register*.

STATUTORY AUTHORITY

The new rule is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§364.5. Recognition of Out-of-State License of Military Spouse.

(a) A military spouse may engage in the practice of occupational therapy without obtaining the applicable occupational therapy license if the military spouse is currently licensed in good standing by another jurisdiction of the U.S. that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Before engaging in the practice of occupational therapy, the military spouse must:

(1) notify the Board in writing of the following:

(A) the military spouse's intent to practice in this state;

(B) the military spouse's full name and any previous last names, social security number, date of birth, residential address, business address, email address, and a chosen address of record;

(C) the license type, license number, and jurisdiction in which the military spouse is currently licensed in good standing; and

(D) a list of all jurisdictions in which the military spouse has held or currently holds a license with the license type, license number, and license expiration date of each;

(2) submit to the Board proof of the military spouse's residency in this state and a copy of the military spouse's military identification card; and

(3) receive from the Board written confirmation that:

(A) the Board has verified the military spouse's license in the other jurisdiction; and

(B) the military spouse is authorized to engage in the practice of occupational therapy in accordance with this section.

(c) The military spouse shall comply with all other Board laws and regulations applicable to the practice of occupational therapy in this state. The military spouse may be subject to revocation of the authorization described by subsection (b)(3)(B) of this section for failure to comply with Board laws and regulations and the Board may notify any jurisdictions in which the military spouse is licensed of the revocation of such.

(d) A military spouse may engage in the practice of occupational therapy under the authority of this section only for the period during which the military service member to whom the military spouse is married is stationed at a military installation in this state but not to exceed three years from the date the military spouse receives the confirmation described by subsection (b)(3) of this section. During this authorization period, the military spouse must:

(1) maintain a current license in good standing in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state;

(2) update the Board of any changes to information as specified in subsection (b)(1)(B)-(C) of this section within 30 days of such change(s); and

(3) notify the Board within 30 days of any disciplinary action taken against the military spouse by another jurisdiction.

(e) The Board will identify, with respect to each type of license issued by the Board, the jurisdictions that have licensing requirements that are substantially equivalent to the requirements for the license in this state; and the Board shall verify that a military spouse is licensed in good standing in the jurisdiction upon receipt of the items described by subsection (b)(1)-(2) of this section.

(f) In this section, "military service member" and "military spouse" have the meaning as defined in Chapter 55, Occupations Code, §55.001.

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 August 23, 2019.

TRD-201902875

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: October 6, 2019

For further information, please call: (512) 305-6900



CHAPTER 370. LICENSE RENEWAL

40 TAC §370.1

The Texas Board of Occupational Therapy Examiners proposes amendments to §370.1, concerning license renewal. The amendments are proposed to remove language concerning restrictions to renewal for a licensee in default of a student loan pursuant to SB 37 of the 86th Regular Legislative Session and to cleanup and clarify provisions in the section.

The proposal includes amendments to reflect law changes made by SB 37, relating to a prohibition on the use of student loan default or breach of a student loan repayment as a ground for refusal to renew a license. Related changes to §370.1 are proposed to remove from the section a provision restricting the renewal of a license for an individual who has defaulted with the Texas Guaranteed Student Loan Corporation.

Additional amendments are proposed as cleanups and clarifications. An amendment is proposed to strike a reference in the section to the number of continuing education hours required per renewal period and to replace such with language referencing continuing education requirements as per Chapter 367, concerning Continuing Education, as adopted amendments to that chapter changed the number of required hours from thirty to twenty-four hours. Additional amendments are proposed to remove a redundant reference to the address of record, as language concerning such is already located elsewhere in the Occupational Therapy Rules, and to clarify a provision regarding a restriction on renewal for certain child support issues, including to add a reference to related statutory language in Texas Family Code.

FISCAL NOTE

Ralph Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments would be in effect, there would be no fiscal implications for state or local government as a result of enforcing or administering the rule as the changes do not impose a cost and any fiscal implications concerning the removal of renewal restrictions for individuals in default of student loans would be effected by law changes already in effect from SB 37.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the rule would not impact a local economy as the proposed rule concerns the reduction, cleanup,

and clarification of occupational therapy regulations and does not impose a cost; therefore, a local employment impact statement is not required.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST

Mr. Harper has determined that for each of the first five years the proposed amendments would be in effect, the public benefit anticipated as a result of enforcing the rule would be the reduction, cleanup, and clarification of occupational therapy regulations. There would be no anticipated economic cost to persons required to comply with the proposed rule.

SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES IMPACT

There would be no costs or adverse economic effects on small or micro-businesses or rural communities as the proposed rule concerns the reduction, cleanup, and clarification of occupational therapy regulations and does not impose a cost; therefore, an economic impact statement or regulatory flexibility analysis is not required for the amendments.

TAKINGS IMPACT ASSESSMENT

The proposed rule would not impact private real property as defined by Tex. Gov't Code §2007.003, so a takings impact assessment under Tex. Gov't Code §2001.043 is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments' impact on government growth during the first five years the rule would be in effect is as follows: would not create or eliminate a government program; would not require the creation of new employee positions or the elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require a decrease in fees paid to the agency and may increase the fees paid to the agency as certain licensees previously unable to renew, pursuant to changes in law made by SB 37, may now renew, and therefore, submit required renewal fees; would not create a new or expand an existing regulation; would repeal an existing regulation to reflect law changes pursuant to SB 37 by removing a provision concerning restrictions to renewal due to student loan default; would not increase the number of individuals subject to the rule's applicability; would decrease the number of individuals subject to the rule's applicability as the amendments would remove restrictions to renewal for certain individuals; and would neither positively nor adversely affect this state's economy as any positive or adverse consequences to the state's economy concerning the removal of renewal restrictions for individuals in default of student loans would be affected by law changes already in effect from SB 37, rather than the related proposed changes, and the other changes are cleanups or clarifications with no economic impact for the state's economy.

REQUIREMENT FOR RULE INCREASING COSTS TO REGULATED PERSONS

Tex. Gov't Code §2001.0045, Requirement for Rule Increasing Costs to Regulated Persons, does not apply to the proposed rule because the rule does not impose a cost, does not increase costs to regulated persons, and because the amendments concerning restrictions to renewal are necessary to reflect law changes in effect pursuant to SB 37 from the 86th Regular Legislative Session.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701-3942 or to lea@ptot.texas.gov no later than 30 days from the date that the proposed amendments are published in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§370.1. License Renewal.

(a) Licensee Renewal. Licensees are required to renew their licenses every two years by the end of their birth month. A licensee may not provide occupational therapy services without a current license. Licenses and license expiration dates should be verified on the Board's license verification web page.

(1) General Requirements. The renewal application is not complete until the Board receives all required items. The components required for license renewal are:

(A) a complete renewal application form as prescribed by the Board verifying completion of the required [30 hours of] continuing education, as per Chapter 367 of this title (relating to Continuing Education);

(B) the renewal fee and any late fees as set by the Executive Council that may be due;

(C) a passing score on the jurisprudence examination;

(D) the licensee's physical address, any work address, other mailing address, email address, and a chosen address of record [The address of record is the address that will be shared with the public. Until licensees select an address of record, the work address will be used as the default. If no work address is available, the mailing address will be used. If no alternate address is available, the home address will be used]; and

(E) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(2) The licensee is responsible for ensuring that the license is renewed, whether receiving a renewal notice or not.

(3) The renewal process is not complete until the Board's license verification web page reflects that the license has been renewed by displaying the new renewal date.

(4) Renewal fees and late fees are non-refundable.

(5) Licensees electing to change their status or renewing a license on inactive or retired status must meet further requirements as per Chapter 371 of this title (relating to Inactive and Retired Status).

(6) Licensees renewing a license expired one year or more must meet further requirements as per §370.3 of this title (relating to Restoration of a Texas License).

(b) Restrictions to Renewal. The Board will not renew a license if it receives information from a child support agency that a licensee has failed to pay child support under a support order for six months or more as provided by Texas Family Code §232.0135. If all other renewal requirements have been met, the license will be renewed when the child support agency notifies the Board it may renew the license.

~~{(1) The Board will not renew a license if a licensee has defaulted with the Texas Guaranteed Student Loan Corporation (TGSLC). Upon notice from TGSLC that a repayment agreement has been established, the license shall be renewed if all other renewal requirements have been met.~~

~~{(2) The Board will not renew a license if the licensee has defaulted on a court or Attorney General's notice of child support. Upon receipt that repayment has been established, the license shall be renewed if all other renewal requirements have been met.}~~

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 August 23, 2019.

TRD-201902874

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: October 6, 2019

For further information, please call: (512) 305-6900



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 11. TEXAS OFFICE OF PRODUCE SAFETY

The Texas Department of Agriculture (TDA or the Department) adopts new Title 1, Part 4, Chapter 11, Texas Office of Produce Safety, Subchapter A, General Provisions, §§11.1-11.4, relating to General Provisions; Subchapter B, Coverage and Exemptions, §§11.20-11.23; and Subchapter C, Compliance and Enforcement, §§11.40-11.43. Subchapter A, General Provisions, is adopted with changes to the proposal published in the June 14, 2019, issue of the *Texas Register* (44 TexReg 2905); Subchapters B and C are adopted without changes to the proposal published in the June 14, 2019, issue of the *Texas Register* (44 TexReg 2905) and will not be republished.

The adopted rules are for TDA's administration of the Food Safety Modernization Act (FSMA), P.L. 111-353, and the rules established by the United States Food and Drug Administration (FDA) to comply with FSMA for produce, titled "Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption," 21 CFR Part 112, commonly referred to as the Produce Safety Rule (Rule).

Through a cooperative agreement with the FDA, the Department is administering the Produce Safety Rule to advance efforts for a nationally integrated food safety system. As part of the cooperative agreement, the Department established the Texas Office of Produce Safety (TOPS) within TDA to administer the Produce Safety Rule.

The rules are adopted to protect Texas consumers and producers by ensuring that food grown, harvested, and packed for human consumption meets the requirements of the Produce Safety Rule. TDA will continue to work in cooperation with local farmers and the fresh fruit and vegetable industries in Texas, by offering outreach programs to educate producers and promote understanding and compliance with the requirements of the Produce Safety Rule throughout the implementation process. Through this collaborative effort, consumers in Texas and nationwide can be assured that Texas produce meets national standards designed to protect individuals and families from foodborne illness.

The Department received 12 comments on the proposal.

Susie Marshall, FSMA Program Manager for the Texas Organic Farmers and Gardeners Association (TOFGA) submitted comments expressing concerns with the effects of the rules on small farmers. TOFGA also submitted numerous questions with their comments which will not be addressed in this adoption document

but will be addressed directly with the organization and producers as part of stakeholder outreach. TOFGA's comments will be addressed individually.

(1) "Mandatory registration." TOFGA opposed its perceived "mandatory registration" for farms because they believe it could create confusion and record keeping burdens on their farmers. TDA notes that there is no "mandatory registration" requirement for farms. Any farm seeking a Qualified Exemption or renewal of that exemption is only required to submit an affirmation of that status; documentation is not required to be submitted with that reaffirmation. The Produce Safety Rule provides that farmers are required to maintain records, regardless of whether they are qualified exempt under the Rule.

(2) Right of Entry. TOFGA opposed §11.40(b), stating that Qualified Exempt farms should not be subject to entry for inspections. While the Department appreciates the comment, §11.1(6), relating to definitions, defines inspections to include the review of records, and therefore no amendment to the proposed section will be made.

(3) Penalty Matrix. TOFGA expressed that the "penalties seem excessive." Administrative penalties are a deterrent for violations and help to ensure that Texas producers meet all standards required by the Produce Safety Rule to avoid any foodborne illness outbreaks. No changes will be made to the penalty matrix at this time.

Judith McCreary, Executive Director, submitted comments on behalf of the Farm and Ranch Freedom Alliance (FARFA). FARFA's comments are addressed individually.

(1) Registration. FARFA suggested that the rules create a registration requirement. This has been addressed above in response to TOFGA's first comment.

(2) Lack of Legal Authority. FARFA suggests that TDA does not have the authority to require exempt farms to "register" with the Department. The Department is authorized to administer the Produce Safety Rule as part of a cooperative agreement with FDA, and pursuant to §91.009(d) of the Texas Agriculture Code, has authority to adopt rules necessary to administer, implement and enforce the coordination of produce safety.

(3) Documentation Provisions/Burden of Proof. FARFA suggests that renewal of eligibility provisions do not provide detailed information as to what will be required as part of the submission process for renewal of qualified exemption. TDA notes that all forms are not a part of the rulemaking process and those requirements do not need to be included in this proposal. Information regarding renewal is addressed in TOFGA's first comment, above.

(4) Right of Entry. FARFA commented that the right of entry provisions are "ambiguous and overbroad" as they apply to Quali-

fied Exempt farms. TDA has addressed this comment above, in TOFGA comment number two.

(5) Egregious Condition. FARFA states that the definition of "egregious condition" is not provided in federal or state statute or regulation and the Department is relying on a definition prepared by FDA and state departments of agriculture, which "was prepared without public input." The definition developed by FDA is being used as part of the inspection process nationally. FARFA argues that the Department lacks the statutory authority to "create a new standard." TDA appreciates the comment submitted by FARFA. As stated above, per the Texas Agriculture Code, §91.009, TDA has the authority to adopt rules and define program terminology necessary to administer the Rule. In response to FARFA's comment, the Department has changed the §11.1(4) to clarify and narrow the meaning of "egregious condition."

(6) Penalty Provisions. FARFA suggested that the penalty provisions are excessive. This comment has been addressed in TOFGA's comment three, above.

(7) Appeal Provisions. FARFA commented that there are no appeal provisions. Section 12.020 of the Texas Agriculture Code provides the process for administrative penalties, appeals and hearings. Accordingly, those provisions have not been included in the proposal as they are provided statutorily.

A comment was submitted by Susan and Dale Staub on behalf of Amador Farms opposing the registration requirement. Susan and Dale Staub submitted comments stating that a requirement to submit documentation to any agency in government is intrusion which will affect sustainability of the farm. While TDA respects their concerns, TDA reiterates the position above.

Kelly Bhatt submitted a comment regarding removal of the definition of egregious condition and excluding Qualified Exempt farms from having to submit paperwork every other year. These comments have been previously addressed and TDA will not address them at this time.

Tim Milberg submitted a comment on behalf of Millberg Farm. The comment did not address the proposed rules and TDA will not respond to it at this time.

The Department also received eight comments from various individuals. All of the submitted comments were in a form template and substantively the same. The commenters proposed the following:

(1) removing provisions which would require qualified exempt farms to submit paperwork biannually, due to the fact that they were subject to inspection at any time;

(2) removing the definition of "egregious condition," or providing XXX; and

(3) requiring farms to register with the Department because failure to "register" would result in a presumption of coverage under the Produce Safety Rule.

Because the comments submitted have been previously addressed within TOFGA and FARFA's proposals, TDA will not respond to those comments. Additionally, the comments which were not responsive to the proposed rules will not be addressed.

While TDA appreciates the time each of the above individuals took to submit their comments, after careful review and consideration the rules are adopted without changes to the proposal published on June 14, 2019 in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§11.1 - 11.4

The adoption is made under §91.009 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of the Produce Safety Rule, and authorizes the Department to adopt rules to coordinate, implement and enforce the Produce Safety program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12 and 91 of the Texas Agriculture Code are affected by the adoption.

§11.1. Definitions.

In addition to the definitions set forth in 21 CFR Part 112, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Anniversary Date--The last day following two years from the issuance of a Qualified Exemption.

(2) CFR--Code of Federal Regulations.

(3) Department--The Texas Department of Agriculture.

(4) Egregious condition--A practice, condition, or situation on a covered farm or in a packing facility that is undertaken as part of a covered activity that directly causes, or is likely to directly cause:

(A) serious adverse health consequences or death from the consumption of or exposure to covered produce; or

(B) an imminent public health hazard.

(5) FDA--United States Food and Drug Administration.

(6) Inspection--An initial or follow up inspection conducted by TOPS for the purpose of inspecting covered produce, a covered farm, or records related to the Produce Safety Rule.

(7) Produce Safety Rule--21 CFR Part 112: Standards for the Growing, Harvesting, Packing and Holding of Produce for Human Consumption, including any additions, amendments or revisions thereto.

(8) Raw agricultural commodity (RAC)--The term "raw agricultural commodity" is defined in Section 201(r) of the Federal Food, Drug and Cosmetic Act and means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing. See 21 U.S.C. §321(4) and 21 CFR §112.3.

(9) TOPS--Texas Office of Produce Safety.

§11.2. Covered Produce.

(a) Covered produce. Covered produce includes produce listed in 21 CFR §112.1.

(b) Produce that is not covered.

(1) The following produce is "not covered" by the Produce Safety Rule under 21 CFR §112.2(a):

(A) produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management;

(B) produce that is not a RAC; and

(C) produce that is rarely consumed raw, specifically the produce on the following exhaustive list: Asparagus; beans, black; beans, great Northern; beans, kidney; beans, lima; beans, navy; beans, pinto; beets, garden (roots and tops); beets, sugar; cashews; cherries,

sour; chickpeas; cocoa beans; coffee beans; collards; corn, sweet; cranberries; dates; dill (seeds and weed); eggplants; figs; ginger; hazelnuts; horseradish; lentils; okra; peanuts; pecans; peppermint; potatoes; pumpkins; squash, winter; sweet potatoes; and water chestnuts.

(2) A farm which solely produces produce that is "not covered" is not subject to the Produce Safety Rule or this chapter.

(3) Produce is eligible for exemption from the requirements of this part if the produce receives commercial processing that adequately reduces the presence of microorganisms of public health significance.

§11.3. Covered Farms.

Per 21 CFR §112.4, the following farms are covered by the Produce Safety Rule and this chapter:

(1) a farm which produces covered produce sold during the previous 3-year period in an amount more than \$25,000 (on a rolling basis), adjusted for inflation using 2011 as the baseline year for calculating the adjustment;

(2) a farm which has its primary production that is devoted to growing, harvesting (such as hulling or shelling), packing, and/or holding of RAC; or

(3) a farm which performs covered activities, including manufacturing/processing of covered produce on a farm, but only to the extent that such activities are performed on RAC.

§11.4. FDA Coordinated Outbreak Response and Evaluation ("CORE") Network.

(a) Subject to its cooperation agreement with FDA, TOPS will work in coordination with the FDA's Coordinated Outbreak Response and Evaluation ("CORE") Network to respond to an outbreak which has been identified by CORE.

(b) FDA will be the lead agency conducting on-site visits and inspections related to an outbreak.

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 August 22, 2019.
TRD-201902861
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: September 11, 2019
Proposal publication date: June 14, 2019
For further information, please call: (512) 463-4075

SUBCHAPTER B. COVERAGE AND EXEMPTIONS

4 TAC §§11.20 - 11.22

The adoption is made under §91.009 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of the Produce Safety Rule, and authorizes the Department to adopt rules to coordinate, implement and enforce the Produce Safety program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12 and 91 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 August 22, 2019.
TRD-201902863
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: September 11, 2019
Proposal publication date: June 14, 2019
For further information, please call: (512) 463-4075

SUBCHAPTER C. COMPLIANCE AND ENFORCEMENT

4 TAC §§11.40 - 11.43

The adoption is made under §91.009 of the Texas Agriculture Code (the Code), which designates the Department as the lead agency for the administration, implementation, and enforcement of the Produce Safety Rule, and authorizes the Department to adopt rules to coordinate, implement and enforce the Produce Safety program; and, §12.020 of the Code, which authorizes the Department to assess penalties for violations of rules adopted by the Department.

Chapters 12 and 91 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.

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Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER DD. INSTRUCTIONAL MATERIALS PORTAL

19 TAC §§66.1401, 66.1403, 66.1405, 66.1407

The Texas Education Agency (TEA) adopts new §§66.1401, 66.1403, 66.1405, and 66.1407, concerning the instructional

materials web portal. The new sections are adopted with changes to the proposed text as published in the February 22, 2019 issue of the *Texas Register* (44 TexReg 768) and will be republished. The new sections implement House Bill (HB) 3526 and Senate Bill (SB) 810, 85th Texas Legislature, Regular Session, 2017, by specifying procedures by which publishers submit instructional materials for inclusion in the instructional materials web portal.

REASONED JUSTIFICATION: HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, added TEC, §31.081, to require the commissioner to develop and maintain an instructional materials web portal to assist school districts and open-enrollment charter schools in selecting instructional materials. HB 3526 and SB 810 also added TEC, §31.082, which requires an analysis of instructional materials submitted by publishers for inclusion in the web portal, and TEC, §31.083, which requires that the web portal include a repository of open educational resources that school districts and open-enrollment charter schools can access at no cost.

The adopted new rules implement HB 3526 and SB 810 by establishing the instructional materials portal, which is designed to promulgate the use of high-quality materials by providing school districts and open-enrollment charter schools access to free, transparent, and user-friendly information. A pilot phase took place during the spring of 2019, involving a select number of Texas school districts and publishers who volunteered to participate. The information about instructional materials generated during the pilot was distributed only to pilot participants.

Adopted new §66.1401, Definitions, defines terms having meanings specific to proposed new Chapter 66, Subchapter DD. In response to public comment, changes were made at adoption to the definitions in paragraphs (8) and (10), as follows.

Paragraph (8), relating to professional development services, was modified to make clear that open education resource (OER) licensors are required to provide information about their professional development services.

Paragraph (10), relating to evaluation of quality, was modified to clarify the option to assign a summative quality rating.

Adopted new §66.1403, Instructional Materials to be Included in the Instructional Materials Portal, describes the instructional materials that will be included in the instructional materials portal and specifies the considerations TEA will use in determining the sequence and scheduling of quality reviews. This provision enables TEA to cost-effectively manage agency resources and state funds and thereby provide maximum value to school districts and open-enrollment charter schools. In response to public comments, provisions from proposed subsections were reorganized, revised, and relocated at adoption, as follows.

Adopted new subsection (a) was revised to clarify instructional materials that may be included in the evaluation of quality (EoQ) process.

Subsection (b), previously proposed as subsection (a), was revised to delineate instructional materials that may be included in the instructional materials web portal.

Adopted new subsection (c) was added to specify that instructional materials included in the EoQ process shall be included in the instructional materials portal.

Proposed subsection (c), relating to evaluations to determine the extent to which the materials cover the essential knowledge and

skills, including English language proficiency standards, was removed from §66.1043 and added, at adoption, as new subsection (f) in §66.1405.

Subsections (d) and (e), previously proposed as subsections (b) and (d), respectively, were re-lettered.

Adopted new §66.1405, Procedures for Publishers to Submit Instructional Materials for Inclusion in the Instructional Materials Portal, establishes the procedures publishers must use to submit materials for inclusion in the instructional materials portal and details the quality review process. In accordance with TEC, §31.082, each instructional material submitted by a publisher for inclusion in the instructional materials portal must undergo an independent analysis by a private entity contracted by TEA. The adopted new rule informs publishers of the requirements for submission, enabling them to plan and allocate resources appropriately. The adopted new rule also specifies when TEA may not include instructional materials in the quality evaluation process, which allows TEA discretion in the selection and timing of materials to be reviewed to make efficient use of agency resources. In response to public comments, provisions have been incorporated at adoption into §66.1405 from §66.1407, as follows.

Subsection (a)(6)(A) was modified to add the word "computer" for clarity. Subsection (a)(7) was modified to incorporate language from proposed §66.1407 and to clarify the conditions under which computer equipment will be provided by publishers for use during the EoQ process and in response to public comment to align the EoQ process with State Board of Education (SBOE) requirements for instructional materials submitted for adoption. Subsection (a)(9) was modified in response to public comment to align the EoQ process with SBOE requirements for instructional materials submitted for adoption. Subsection (a)(13) was modified to clarify that OER licensors are not required to provide a Texas Secretary of State identification number. Subsections (a)(8), (10), (14), and (15) were modified to add applicability to an OER licensor.

Subsection (b) was modified to incorporate language from proposed §66.1407 and to clarify materials that may not be included in the quality evaluation process.

Subsection (c) was modified to incorporate language from proposed §66.1407 and to clarify when publishers may withdraw materials from the quality evaluation process.

Subsection (d) was not modified at adoption.

New subsection (e) was added to incorporate language from proposed §66.1407 and to align the EoQ process with SBOE processes for instructional materials submitted for adoption.

New subsection (f), moved from proposed §66.1403(c), was added to specify, in accordance with TEC, §31.082, that instructional materials submitted for quality review may be evaluated to determine the extent to which the materials cover the essential knowledge and skills identified under TEC, §28.002, for the subject and grade level for which the material is intended to be used. The process by which instructional materials are evaluated regarding the extent to which they cover the essential knowledge and skills is conducted under the authority of TEC, §31.023, and SBOE rules in 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials.

In addition, the section title was revised from "Procedures for Publishers to Submit Instructional Materials for Inclusion in the Instructional Materials Portal" to "Procedures for Publishers and

Open Education Resource Licensors to Submit Instructional Materials for Inclusion in the Instructional Materials Portal."

Adopted new §66.1407, Procedures for Open Education Resource Licensors to Submit Materials for Inclusion in the Open Education Resource Repository, establishes the requirements for OER licensors to submit instructional materials for inclusion in the OER repository, enabling them to plan and allocate resources appropriately. In response to public comments, provisions in proposed subsections (a)(3) through (d) have been incorporated into §61.1403 and §66.1405 and deleted from this section. Subsection (a)(1) was modified to clarify that the subsection applies to the OER repository.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began February 22, 2019, and ended March 25, 2019. A public hearing on the proposal was held at 8:30 a.m. on March 21, 2019, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Following is a summary of public comments received and corresponding agency responses.

Comment. Edgenuity Inc. commented that there is no opportunity to review and comment on the pilot process and there is no collaboration between the publishers and the state. The commenter added that the process also does not allow for input by the districts.

Agency Response. The agency disagrees. During the pilot, comments and input were solicited at every step. The agency received feedback on the pilot rubric from more than 450 stakeholders, including, but not limited to, Texas teachers, district and campus administrators, State Board of Education (SBOE) members, regional education service centers (ESCs), numerous Texas associations, and publishers. The agency conducted 24 presentations, 17 focus groups, and several individual phone calls, representing targeted outreach to over 400 stakeholders and 12 different organizations and associations. In addition, the rubric was sent out to multiple agency email lists that included over 43,000 subscribers with a request for feedback. The agency also requested that all ESCs hold presentations and focus groups with all districts in their regions. In addition to collecting feedback on the quality rubric, the pilot itself was designed to collect feedback from publishers about the process in a low-stakes setting prior to launching quality reviews that would be posted on the instructional materials web portal.

Comment. Edgenuity Inc. commented that the proposed rules seem to take away the choice to determine which materials are best for a school district based on their student population. The commenter added that it seems like an effort by the Texas Education Agency (TEA) to take choices away from districts.

Agency Response. The agency disagrees. Texas Education Code (TEC), §31.081(a), states that the purpose of the web portal is to "assist school districts and open enrollment charter schools in selecting instructional materials under Section 31.101." Therefore, the goal of the instructional materials portal is to provide districts with the information they need when making local purchasing decisions. Districts may choose to use the information provided in the instructional materials portal as a part of their local process, but this is not a requirement.

Comment. Edgenuity Inc. asked if the proposed rules would replace the current Commissioner's list. The commenter also asked if the proposed rules would replace the instructional materials adoption process for textbooks/core instructional materials.

Agency Response. These questions fall outside the scope of this rule. That said, the answer to both of the publisher's questions is no. The instructional materials portal and quality evaluations of instructional materials are authorized by TEC, Chapter 31, Subchapter B-1, §31.081-31.084. The Commissioner's list as authorized by TEC, §31.0231, and the SBOE adoption process authorized by TEC, §31.022, continue and operate in addition to the instructional materials portal.

Comment. Edgenuity Inc. commented that the proposed rules add an additional review process and further complicate what districts need to know before using instructional materials.

Agency Response. The agency disagrees. The quality evaluations provide additional information for local decision makers, and the web portal will aggregate this information into a clear, user-friendly format that will help ensure reviews are easy to access. Further, 100% of districts in the pilot program responded to a survey stating that they would use future reviews of additional products, content areas, and grade levels to help them make purchase decisions best for their school system.

Comment. Edgenuity Inc. asked if the intent of this process is to review all materials, including core, intervention, and supplemental materials. The commenter also added that the proposed rules are not only cost prohibitive for the state but will take funds away from districts to purchase the materials.

Agency Response. The question posed falls outside the scope of this rule. That said, the agency intends to provide information to local school districts that is most relevant to their instructional materials selection needs. Several criteria will be considered when selecting materials to be reviewed, including criteria that reflects the local priorities of districts. Therefore, instructional material quality evaluations may be completed for core, intervention, and supplemental materials based on district need. TEC, §31.081, authorizes the commissioner to "use money from the technology and instructional materials fund to pay any expenses associated with the web portal."

Comment. Edgenuity Inc. commented that the proposed rules seem very similar to the process implemented by Louisiana. The commenter added that Louisiana uses the EdReports process, which is a gating process based on a textbook model not on the way schools teach and students learn. The commenter also stated that the proposed rules should not follow the gating method used by EdReports but, instead, review materials for standards alignment.

Agency Response. The agency disagrees that this process is similar to the process implemented by Louisiana but agrees that it should not be a "gating" process. The agency developed a Texas specific quality rubric and a Texas specific process to support the needs of local school districts. As a result, the scoring methodology associated with the final version of the English language arts and reading (ELAR) quality rubric does not include a "gating process." All materials being reviewed for quality will be reviewed in their entirety across all indicators of the rubric. Additionally, all materials being reviewed for quality will also be reviewed for standards alignment as required by TEC, §31.082.

Comment. Edgenuity Inc. stated that the quality evaluations do not address the way teachers teach and students learn.

Agency Response. The agency disagrees. TEC, §31.082, requires the agency to evaluate the quality of the material and determine the extent to which the material covers the essential knowledge and skills for the subject and grade level for which the

material is to be used. This is completed as a part of the quality review process. In addition, the quality rubric is developed to support research-based practices related to instructional materials. However, the quality rubric is not prescriptive of the pedagogical implementation of materials since that is led by local education agencies and is difficult for publishers to address and control in the materials themselves.

Comment. Edgenuity Inc. expressed concern that the proposed rules should not supplant the district's ability to purchase and certify their own materials.

Agency Response. The agency agrees. TEC, §31.081(a), states that the purpose of the web portal is to "assist school districts and open enrollment charter schools in selecting instructional materials under Section 31.101." Districts may choose to use the information provided in the instructional materials portal as a part of their local process, but this is not a requirement.

Comment. Edgenuity Inc. stated that additional clarity is needed on the methods used, the reviewers, the review process, and ultimate goal for the program for TEA.

Agency Response. The agency disagrees. This matter falls outside the scope of these rules, which focus on developing publisher processes and procedures. However, the agency seeks to develop a clear and transparent process for stakeholders participating in quality reviews. To this end, an overview of the quality review process is included in information sent to publishers via listservs and webinars. The agency also seeks to answer clarifying questions received from stakeholders in webinars and through the publisher application process.

Comment. Three individuals noted disparity in treatment of publishers and open education resource (OER) licensors, in terms of public review and other requirements, and asked that the agency review proposed rules for policy and legal differences.

Agency Response. The agency disagrees with the perceived disparity to the extent that the commenters imply the treatment differs as a result of the proposed rules. The rules reflect statutory authority and the policies underlying that statutory authority. The agency further disagrees, for the same reason, with the commenters' requested review of the proposed rules. However, §66.1401, §66.1403, §66.1405 and §66.1407 have been revised at adoption to address the concerns of the commenters.

Comment. Three individuals commented that there are two routes for a publisher to have this information listed in the portal, either: 1) a publisher's instructional material is "on the instructional materials list" or 2) the instructional material is "submitted by a publisher for inclusion in the web portal." The commenters added that, in contrast, the quality review under TEC, §31.082, is specifically for each instructional material submitted by a publisher for inclusion in the web portal developed under TEC, §31.081. The commenters noted that the language mirrors the second route and neither requires nor authorizes a review for instructional materials already on the state's instructional materials list.

Agency Response. The agency disagrees. TEC, §31.081(a), requires the commissioner to develop and maintain a web portal to assist school districts and open-enrollment charter schools in selecting instructional materials, which provides the commissioner with authority to review instructional materials included on the state instructional materials list. To meet this requirement, the agency must be able to review materials for quality as outlined

in adopted new §66.1403(a). If the agency can only review materials submitted by a publisher for inclusion in the web portal, it would only be providing information to districts about publishers who self-select into the process. This would potentially prevent districts from accessing the information that would assist them in selecting materials. Given this potential problem, materials on the state's instructional materials list may be evaluated for quality if the materials meet the requirements in adopted new §66.1403(a). In addition, in the situation where materials on the list do not meet the requirements in adopted new §66.1403(a), the agency will not conduct a quality review but will still include information about materials on the instructional materials list in the portal to meet the requirements outlined in TEC, §31.081(b)(1).

Comment. Three individuals commented that the review under TEC, §31.082, is specifically for both quality of the material and alignment with the Texas Essential Knowledge and Skills (TEKS). The commenters noted that statute says "and" not "or." The commenters stated that materials on a state instructional materials list already have been thoroughly vetted for TEKS alignment by the SBOE (under TEC, §31.023) or by the commissioner (under TEC, §31.0231). The commenters observed that TEC, §31.082, does not apply to instructional materials on a state instructional materials list, which have been reviewed for alignment.

Agency Response. The agency disagrees with the comment regarding the applicability of TEC, §31.082, to instructional materials on a state instructional materials list. No language in any of the cited statutes validates the commenters' applicability comment. These materials may be evaluated for quality if they meet the requirements in adopted new §66.1403(a), which enables the agency to meet the requirements outlined in TEC, §31.081.

Comment. Three individuals commented that TEC, §31.082, clearly applies only to those publishers who wish to bypass the state's existing listing processes and still have products considered by a district or school. The commenters added that, for example, it may be a route for OER or for national editions or other instructional materials not customized for Texas. The commenters stated that it is not a process, however, to be imposed on or boot-strapped to the other sections on state lists, such as the SBOE list.

Agency Response. The agency disagrees. No provision of TEC, §31.082, validates the comment. TEC, §31.082, requires the commissioner to contract with a private entity to conduct an independent analysis of each instructional material submitted by a publisher for inclusion in the web portal developed under TEC, §31.081. This section does not distinguish between publishers on the "SBOE list" and publishers "bypassing the state's existing list processes," so the agency will apply the section's requirements to all publishers who submit materials to be reviewed for quality. As a part of this process, the analysis must evaluate the quality of the material and determine the extent to which the material covers the essential knowledge and skills for the subject and grade level for which the material is to be used.

Comment. Three individuals asked for a definition of *quality* in the proposed rule. The commenters stated that if quality is not defined, it is truly in the eye of the beholder and asked how the process would not be subjective. The individuals also asked if evaluators will interpret the rubric uniformly, or could one product be disadvantaged by subjective judgment of one reviewer, for example.

Agency Response. The agency first notes that to the extent that the comment includes a question, any such question posed falls outside the scope of this rule. The specific definition of *quality* and rubric interpretation process falls outside the scope of these rules, which focus on the foundational procedures for the submission of instructional materials as required by TEC, §31.081. However, the agency seeks to provide clarity around these topics for stakeholders. The definition of *quality* can be found in the sections and indicators included in the quality rubric for each subject area and grade level. This rubric is rigorously reviewed by Texas educators and is available for publisher and public comment prior to its use. The agency supports uniform and fair use of the rubric by providing an extensive training program for reviewers and on-going monitoring of evaluator performance by team leaders and managers. Additionally, each material is reviewed by a team of trained reviewers that is required to come to consensus when evaluating a product to ensure uniformity in how each quality indicator is being interpreted.

Comment. Three individuals requested a crosswalk between statute and the proposed rule and an explanation of where each component of proposed rule is authorized in law.

Agency Response. The agency disagrees with this comment and its embedded requests. The requested actions are unnecessary, as the rule proposal and adoption already provide sufficient explanations of legal authority. In addition, further clarity is provided on components of the rule as a part of the agency's response to comments through the rulemaking process.

Comment. Three individuals commented that the proposed rule tries to impose the quality review on materials already on the state adoption list and, as such, proposed §66.1403(a)(1)(B)-(C), adopted as §66.1403(a)(1)-(3), is not authorized by nor consistent with statute.

Agency Response. The agency disagrees. Nothing in TEC, §§31.023, 31.2031, 31.081, or 31.082, prevents the application of the quality review process in TEC, §31.082, to instructional materials included on the state adoption list. Information about materials already on the SBOE list will be included on the portal. However, materials on the SBOE list are not evaluated for quality unless they meet the requirements of adopted new §66.1403(a), which allow the agency to meet the requirements outlined in TEC, §31.081.

Comment. Three individuals commented that commissioner rulemaking under TEC, §31.081(c), is limited to establish the procedure by which a publisher may submit instructional materials for inclusion in the web portal. The commenters noted that the statute says "may submit," not "shall submit."

Agency Response. The agency agrees. The rules do not require publishers to submit instructional materials for review under TEC, §31.082. The agency notes that the agency may also adopt rules as necessary to implement TEC, Chapter 31, Subchapter B-2, as defined in TEC, §31.084.

Comment. Three individuals commented that they are unaware of statutory authority giving the commissioner authority to make rules for the SBOE.

Agency Response. The agency agrees. The agency has no authority to make rules for the SBOE. The rules in 19 TAC §§66.1401, 66.1403, 66.1405, and 66.1407 are commissioner rules, not SBOE rules.

Comment. Three individuals commented that TEC, §31.082, requires a private entity's independent analysis of each instruc-

tional material submitted by a publisher for inclusion in the web portal to "evaluate the quality of the material." The commenters stated that the proposed rule, however, requires "assignment of a quality rating," which is not found in statute.

Agency Response. The agency agrees with the comment to the extent that it quotes the language of TEC, §31.082, and agrees that the words "assignment of a quality rating" are not in the statutory section. However, the agency notes that assignment of a quality rating reasonably arises from the statutory language of TEC, §31.081(a), which states that the purpose of the web portal is to "assist school districts and open enrollment charter schools in selecting instructional materials" and from the language of TEC, §31.082(b), which requires that the "results of the analysis conducted under Subsection (a)" be included on the web portal. To provide effective assistance, quality evaluation results must be presented in an easily understood and digestible form, which may include a summative rating. The definition of evaluation of quality in §66.1401(10) was modified at adoption to address the assignment of a summative quality rating.

Comment. Three individuals commented that the after-the-fact quality evaluation criteria, creating a rubric for quality evaluation, after materials already have been produced, provides an inherently political process.

Agency Response. The agency disagrees. The creation of a rubric for quality evaluation is outside the scope of this rule. That said, TEC, §31.081(a), states that the purpose of the web portal is to assist school districts and open-enrollment charter schools in selecting instructional materials. To adhere to the statute, the agency's primary goal is to evaluate materials based on district need, which may or may not align with the material production timelines of all publishers. However, the agency seeks to create a clear and transparent process for the development and use of quality rubrics so each publisher can use that information in its unique production and development timeline.

Comment. Three individuals commented that quality evaluations should not apply to materials already on the SBOE list.

Agency Response. The agency disagrees that quality reviews do not apply to materials on the instructional materials list. These materials may be evaluated for quality if they meet the requirements in adopted new §66.1403(a), which enables the agency to meet the requirements outlined in TEC, §31.081.

Comment. Three individuals commented that rating instructional materials on after-the-fact criteria after they have been produced, imposes new and subjective criteria.

Agency Response. The agency disagrees. This matter falls outside the scope of these rules, which focus on developing publisher processes and procedures. However, the agency seeks to provide clarity on the rationale for including a summative rating. TEC, §31.081(a), states that the purpose of the web portal is to assist school districts and open-enrollment charter schools in selecting instructional materials. To provide effective assistance, quality evaluation results must be presented in an easily understood and digestible form that may include a summative rating. Additionally, evidence from districts about the desire for a summative rating was collected as a part of the pilot process.

Comment. Three individuals commented that the proposed rules run counter to state contracting laws, which provide specification up-front before submission of product.

Agency Response. The agency disagrees. Contracting laws fall outside the scope of these rules. That said, state contracting

laws apply to materials that are included on the SBOE adoption list and are eligible for a state contract. Materials submitted for quality evaluation and inclusion on the portal that have not been submitted for adoption are not eligible for state contracts.

Comment. Three individuals commented that requiring all rubrics to be finalized for a product area, well prior to the submission of materials, would be a method to ensure better integrity of the process, more thoughtful design, and better outcomes for students.

Agency Response. The agency disagrees. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. However, the agency seeks to provide a transparent rubric development timeline to stakeholders. While prior knowledge of the rubric is not required by statute, once future rubric development processes are solidified, the agency will post it on the instructional materials web portal for purposes of transparency.

Comment. Three individuals requested that the agency address each difference between this process and the SBOE and commissioner list processes. The commenters stated that the SBOE process for TEKS alignment and listing is thorough. The commenters stated that the SBOE process provides for public input and comment. The commenters asked what is done with public comment under proposed §66.1405 for example.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. However, the agency seeks to develop a clear and transparent process for publishers participating in quality reviews. To this end, an overview of the TEKS alignment process is included in information sent to publishers via listservs and webinars. The agency also seeks to answer clarifying questions received from stakeholders in webinars and through the publisher application process.

Comment. Three individuals requested that the agency address differences between this process and the SBOE and commissioner list processes. The commenters stated, for example, that the SBOE process provides criteria far enough in advance that publishers can meet the criteria.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. However, the agency seeks to provide a transparent rubric development timeline to stakeholders. While prior knowledge of the rubric is not required by statute, once future rubric development processes are solidified, the agency will post it on the instructional materials web portal for purposes of transparency.

Comment. Three individuals requested that the agency address differences between this process and the SBOE and commissioner list processes. The commenters stated, for example, that the SBOE process provides for Texas educators to conduct the review.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. However, the agency agrees that Texas educators should conduct the reviews and they are.

Comment. Three individuals requested that the agency address differences between this process and the SBOE and commissioner list processes. The commenters stated, for example, that the SBOE process provides multiple safeguards for the integrity of the review process and against conflicts of interest (e.g., nominees for review panels cannot be accepted from publishers or

hardware or software technology vendors, nominees to review panels must disclose affiliations within 36 months with publishers or universities that produce OER, SBOE members cannot accept publisher campaign donations).

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. However, the agency agrees that the integrity of the review process should be maintained. Therefore, safeguards will be included in the application process to identify quality reviewers to protect against conflict of interest on review teams.

Comment. Three individuals requested that the agency address differences between this process and the SBOE and commissioner list processes. The commenters stated, for example, that the SBOE process provides for a review to ensure factual accuracy.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures.

Comment. Three individuals requested that the agency address differences between this process and the SBOE and commissioner list processes. The commenters stated, for example, that the SBOE process provides penalties for issues such as factual errors and late deliveries.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures.

Comment. Three individuals requested that the agency address differences between this process and the SBOE and commissioner list processes. The commenters stated, for example, that the SBOE process is not allowed to use Common Core State Standards under TEC, §28.002.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. However, the agency adheres to the provisions of TEC, §28.002. In addition, as required by TEC, §31.082, the independent analysis of each instructional material submitted by a publisher for inclusion in the instructional materials web portal includes an evaluation of quality and determines the extent to which the material covers the TEKS for the subject and grade level for which the material is to be used.

Comment. Three individuals requested that the agency address differences between this process and the SBOE and commissioner list processes. The commenters stated, for example, that the SBOE process is provided to schools for selection in a timely manner in November preceding a school year to ensure plenty of time for local review and selection.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures.

Comment. Three individuals commented that many of these important provisions, such as ensuring schools receive timely deliveries, also apply to the commissioner's list under TEC, §31.0231. The commenters expressed concern that for the proposed rules, it is unclear whether or how these items apply, especially those for every publisher or manufacturer of instructional materials, in accordance with TEC, §31.151 (Duties of Publishers and Manufacturers), and what positive policy goals such differences achieve.

Agency Response. The agency disagrees. The quality evaluations authorized under TEC, §31.081, and the information about instructional materials included in the instructional materials portal are for the sole purpose of providing reliable information to local education agencies to assist their instructional materials selection.

Comment. Three individuals commented that publishers submitting through the SBOE process have due process to perfect their materials in order to be listed. The commenters asked if the quality review process affords publishers an opportunity to appeal or to address items at issue.

Agency Response. The agency first notes that to the extent that the comment includes a question, any such question posed falls outside the scope of this rule. The agency disagrees with the comment's characterization of the SBOE materials-perfecting processes as constituting legal due process and further notes that the quality review process of TEC, §31.082, does not include such materials-perfecting processes. Furthermore, appeals processes are not required by either TEC, §31.081 or §31.082. However, the agency seeks to create a transparent process for publishers. As a result, the agency has included an appeals process associated with the launch of the ELAR quality reviews. Additionally, as a part of the launch of the ELAR quality reviews, the agency provides an opportunity for publishers to respond to the quality review of their product. This response will be reviewed for accuracy and published on the portal.

Comment. Three individuals asked why a publisher would not be able to withdraw from the review process under proposed §66.1405.

Agency Response. To ensure that the agency provides best value to the citizens of Texas, it must be able to optimally manage its limited resources. Therefore, the agency requires a commitment from publishers to not withdraw from the process after quality evaluations have begun. In response to public comment, §66.1405(c) has been amended at adoption to clarify when publishers may withdraw from the quality evaluation process.

Comment. Three individuals asked how the agency will determine when materials will be reviewed for TEKS and English language proficiency standards (ELPS) alignment. The commenters stated that proposed §66.1403 says materials "may" be reviewed for TEKS alignment and may "when applicable" be reviewed for ELPS alignment.

Agency Response. The agency agrees. Proposed §66.1403(c) was revised and adopted as §66.1405(f) to clarify alignment requirements for TEKS and ELPS.

Comment. Three individuals requested that the agency address timing of reviews and of release of reviews. The commenters stated that proposed §66.1405 provides procedures for submitting materials but does not address timeframes for submission, when the reviews will be released, and whether all reviews will be released at the same time, as is done with SBOE alignment reviews.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. However, the agency seeks to provide a transparent timeline and process for stakeholders. Therefore, once future review timelines and processes are solidified, the agency will post them on the instructional materials web portal.

Comment. Three individuals asked if publishers are required to provide equipment to a private entity. The commenters stated

that proposed §66.1405 requires publishers to provide specialized computer hardware or other equipment to a private entity and asked specification on the types of hardware or equipment and clarification on how the agency will determine quantity.

Agency Response. The agency first notes that to the extent that the comment includes a question, any such question posed falls outside the scope of this rule. That said, the agency agrees. If an instructional material submitted for quality evaluation requires specialized equipment to be evaluated (e.g., science lab activities), then the publisher must provide the necessary equipment for the duration of the review period. It would be the job of the publisher in each case to determine the specific hardware or equipment required. Quantity is determined based on the number of reviewers and the number of reviewer management support staff assigned to each material being evaluated. Such assignments are made at the beginning of a review cycle and are disclosed when the solicitation for submission is made to publishers. Section 66.1405(a)(7) has been amended at adoption to clarify.

Comment. Three individuals commented that the proposal increases costs to regulated persons.

Agency Response. The agency disagrees. Equipment will be returned to the publisher after the review period.

Comment. Three individuals requested that the agency address criteria for an "independent analysis." The commenters stated that TEC, §31.082, requires the commissioner to contract with a private entity to conduct an "independent analysis" and asked if "independent" conflicts with proposed §66.1405(b)(1). The commenters noted that the proposed rule likely did not mean to allow the "independent evaluator" to be an OER author, to submit and evaluate its own OER materials, and to evaluate a competitor's products.

Agency Response. The agency first notes that to the extent that the comment includes a question, any such question posed falls outside the scope of this rule. That said, the agency agrees. Section 66.1405(b)(1) has been amended at adoption to clarify.

Comment. Three individuals requested that the agency change the method of finance for paying for the quality review to a source of funds that does not take money from items provided to children. The commenters stated that TEC, §31.021, says the state instructional materials and technology fund shall be used to "pay the expenses associated with the instructional materials web portal developed under Section 31.081." The commenters noted that it does not, however, say expenses associated with the quality review under TEC, §31.082.

Agency Response. This matter falls outside the scope of these rules, which focuses on developing publisher processes and procedures. That said, TEC, §31.081(a), states that the purpose of the web portal is to "assist school districts and open-enrollment charter schools in selecting instructional materials," and TEC, §31.082, requires that the analysis of instructional materials "evaluate the quality of the material." To provide effective assistance to school districts and to conform to the requirement in TEC, §31.082, that a "private entity" conduct the analysis of instructional materials, it is appropriate to use the same funding source to fulfill the requirements of TEC, §31.082.

Comment. Three individuals commented that the statute does not say "any expenses" associated with the web portal, as stated in the proposed rules preamble.

Agency Response. The agency disagrees. TEC, §31.081(e), version as added by Acts 2017, 85th Legislature, Chapters 581 and 785, states, "the commissioner shall use money in the state technology and instructional materials fund to pay any expenses associated with the web portal."

Comment. Three individuals commented that the agency consider negotiated rulemaking, stating that multiple stakeholders will be significantly affected by this proposed rulemaking. The commenters noted that Chapter 2008 of the Government Code (Negotiated Rulemaking Act) outlines the procedure for negotiated rulemaking and suggested this method as a way to bring parties together and achieve consensus.

Agency Response. The agency disagrees. The agency considers the standard rulemaking process sufficient for these rules.

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §31.023, which requires the State Board of Education to determine the percentage of the elements of the essential knowledge and skills of the subject and grade level covered by each instructional material submitted to be included on the list of adopted instructional materials; TEC, §31.081, as added by House Bill (HB) 3526 and Senate Bill (SB) 810, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to develop and maintain a web portal to assist school districts and open-enrollment charter schools in selecting instructional materials; TEC, §31.081(c), which requires the commissioner to adopt rules to establish the procedure by which a publisher may submit instructional materials for inclusion in the web portal; TEC, §31.082, as added by HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to contract with a private entity to conduct an independent analysis of each instructional material submitted by a publisher for inclusion in the web portal developed under TEC, §31.081; TEC, §31.083, as added by HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, which requires the commissioner to include in the web portal developed under TEC, §31.081, a repository of open educational resources and other electronic instructional materials that school districts and open-enrollment charter schools may access at no cost; and TEC, §31.084, as added by HB 3526 and SB 810, 85th Texas Legislature, Regular Session, 2017, which authorizes the commissioner to adopt rules as necessary to implement the provisions of TEC, Chapter 31, Subchapter B-2.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §31.023; and §§31.081, 31.082, 31.083, and 31.084, as added by House Bill 3526 and Senate Bill 810, 85th Texas Legislature, Regular Session, 2017.

§66.1401. *Definitions.*

For purposes of this subchapter, the following words and terms shall have the following meanings.

(1) Classroom set--This term refers to the components of an instructional material, including, but not limited to, the Texas Essential Knowledge and Skills-bearing components sufficient for use by a teacher and 25 students.

(2) Inclusion--This term means the presentation or display of instructional materials, open education resources (OERs), and related information in the instructional materials portal or on other websites where information is publicly available to which the instructional materials portal links.

(3) Instructional materials--This term has the meaning assigned by Texas Education Code (TEC), §31.002(1), and §66.27(a) of

this title (relating to Proclamation, Public Notice, and Schedule for Adopting Instructional Materials).

(4) Open education resource--This term has the meaning assigned by TEC, §31.002(1-a) and §31.083.

(5) Open education resource submission form--This term refers to a document generated and approved by the Texas Education Agency (TEA) on which an OER licensor, a publisher, or TEA records information required for submission of OERs to the repository.

(6) Open education resource submission process--This term refers to the procedures followed by an OER licensor, a publisher, or TEA when submitting OERs to the OER repository in the instructional materials portal.

(7) OER licensor--This term means the individual or entity that offers an OER under the terms of an intellectual property license as specified in TEC, §31.083. Publishers and TEA may be OER licensors.

(8) Professional development services--This term means the training and instruction provided by a publisher or its designee or an OER licensor for the purpose of teaching teachers and other educators how to use the publisher's or OER licensor's instructional materials.

(9) Publisher--This term means the developer or distributor of instructional materials and has the meaning assigned by TEC, §31.002(2).

(10) Evaluation of quality--This term refers to the independent analysis of instructional materials based on their quality. This includes the option to assign a summative quality rating to the materials for publication in the instructional materials portal.

(11) Evaluation of quality submission form--This term refers to a document generated and approved by TEA in which publishers record information required for submission of instructional materials for an evaluation of quality (EoQ).

(12) Evaluation of quality submission process--This term refers to the procedures followed by publishers when submitting instructional materials for an EoQ.

§66.1403. *Instructional Materials to be Included in the Instructional Materials Portal.*

(a) Instructional materials may be included in the evaluation of quality (EoQ) process if:

(1) a publisher or open education resource (OER) licensor submits instructional materials through the EoQ submission process;

(2) a member of the State Board of Education requests in writing that an instructional material be included in an EoQ; or

(3) more than 10% of local education agencies request in a format determined by the Texas Education Agency (TEA) that an instructional material be included in an EoQ.

(b) The following instructional materials may be included in the instructional materials web portal:

(1) instructional materials submitted by TEA; and

(2) OERs submitted directly to TEA through the OER submission process for inclusion in the OER repository. OER materials may not be included in the repository unless:

(A) a publisher or other OER licensor submits such materials through the EoQ submission process;

(B) TEA submits such materials for which TEA is the OER licensor for the purposes of being reviewed for quality; or

(C) the materials are submitted in accordance with subsection (a)(2) or (3) of this section.

(c) Instructional materials included in the EoQ process shall be included in the instructional materials portal.

(d) TEA may determine the sequence and scheduling of quality reviews based on the following considerations:

- (1) the availability and allocation of resources for completion of quality reviews;
- (2) the needs of public schools in Texas;
- (3) the timing of submission to TEA; and
- (4) other factors deemed relevant by TEA to maximize the effectiveness of the quality review process.

(e) TEA may exclude from the quality review process a submission that does not constitute an instructional material.

§66.1405. Procedures for Publishers and Open Education Resource Licensors to Submit Instructional Materials for Inclusion in the Instructional Materials Portal.

(a) A publisher or an open education resource (OER) licensor that submits instructional materials for an evaluation of quality (EoQ) shall:

- (1) submit a completed Texas Education Agency (TEA)-generated EoQ submission form by the deadline stated in the submission form. TEA may adapt the submission form, as it deems necessary, to develop and maintain the instructional materials web portal;
- (2) sign a set of assurances at the time of submission assuring compliance with the requirements listed in this subchapter;
- (3) submit instructional materials that are:
 - (A) in electronic format;
 - (B) complete and include all content to be used in the final product; and
 - (C) fully functional for review purposes;
- (4) ensure submitted instructional materials remain final and unchanged throughout the quality review process, unless otherwise specified by TEA;
- (5) make submitted instructional materials available for reviewers for the duration of a review period to be determined by TEA and made known to publishers and OER licensors;
- (6) include information required for reviewers to complete electronic reviews of instructional materials, including, but not limited to:
 - (A) computer hardware and system requirements for the review of any item included in an instructional material submission; and
 - (B) information for online products, including internet location, keycodes, passwords, and other login information required to ensure access to the materials being reviewed throughout the review period;
- (7) provide specialized computer hardware or other equipment necessary to use an instructional material as intended by a student and/or teacher. Such equipment will be returned to the publisher or OER licensor at the conclusion of the review period. Such equipment must be provided:

- (A) for the duration of the review period; and

(B) in a quantity to be determined by TEA and communicated to the publisher or OER licensor at the time the materials are submitted for review;

(8) provide the following information in a format determined by TEA and communicated to publishers or OER licensors by way of the EoQ submission form regarding the instructional materials submitted:

- (A) computer hardware and system requirements for use of the materials;
- (B) availability and description of professional development services;

(C) a report for each electronic component that verifies that the component complies with §66.28(a)(2) of this title (relating to Requirements for Publisher Participation), which can be satisfied by a report prepared for submission to the SBOE; and

(D) a complete description of all student and teacher components;

(9) provide accurate and up-to-date pricing information for each instructional material in a form and format to be determined by TEA and communicated to publishers and OER licensors in the application for submission of materials;

(10) make samples of instructional materials available for public review during a review period determined by TEA, as deemed necessary by TEA and made known to publishers or OER licensors by TEA;

(11) assume responsibility for all expenses incurred by participation in the review process, as TEA does not guarantee return of sample instructional materials;

(12) acknowledge that TEA and its designee have final authority for determining all quality ratings;

(13) with the exception of OER licensors, provide evidence in the form of an identification number provided by the Texas Secretary of State proving that the publisher is approved to conduct business in the state of Texas;

(14) verify that the publisher or OER licensor is the copyright owner of the instructional materials; and

(15) verify that the individual submitting the materials is legally authorized to act on behalf of the publisher or OER licensor.

(b) TEA may not include materials in the quality evaluation process if:

- (1) materials have been authored by a current employee of TEA, unless those materials are open education resources;
- (2) materials have been authored by the TEA's designated independent evaluator; or
- (3) reviewers lack capacity to evaluate all submitted materials.

(c) Publishers or OER licensors that submit materials for quality evaluation may not withdraw those materials from the review process after the review process is underway as communicated by TEA.

(d) This section does not apply to or otherwise limit the submission of instructional materials by TEA for inclusion in the instructional materials portal.

(e) Publishers or OER licensors that submit materials for quality evaluation may not directly or indirectly contact reviewers before

or during the review process if such contact or solicitation relates to the EoQ process.

(f) The TEA may satisfy the requirement set forth in Texas Education Code (TEC), §31.082(a)(2), by:

(1) conducting Texas Essential Knowledge and Skills (TEKS) coverage reviews and English Language Proficiency Standards (ELPS) coverage reviews, for subject areas in which ELPS exist, of instructional materials that have been submitted for an EoQ; or

(2) using the results of TEKS coverage reviews and ELPS coverage reviews, for subject areas in which ELPS exist, of materials under consideration for adoption under a current proclamation or adopted in a previous proclamation as authorized by TEC, §31.022, and 19 TAC Chapter 66, Subchapter B, of this title (relating to State Adoption of Instructional Materials).

§66.1407. *Procedures for Open Education Resource Licensors to Submit Materials for Inclusion in the Open Education Resource Repository.*

An open education resource (OER) licensor that submits OERs for inclusion in the OER repository shall:

(1) submit a completed Texas Education Agency (TEA)-generated OER submission form, which TEA may adapt, as it deems necessary, to develop and maintain the OER repository; and

(2) sign a set of assurances at the time of submission assuring compliance with the requirements in this subchapter.

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 August 21, 2019.

TRD-201902857

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: February 22, 2019

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



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §102.1, concerning fees. This amendment to the existing rule will clarify the biennial nature of renewals for several license/registration types, establish a standalone nitrous oxide monitoring category for dental assistants pursuant to 22 TAC §114.4, and enable the Board to assess appropriate fees in a responsive manner for the prescription monitoring program, Texas.gov internet portal, and query and monitoring of practitioners through the National Practitioner Data Bank. This amendment is adopted with no changes to the proposed text as published in the July 19, 2019, issue of the *Texas Register* (44 TexReg 3603), and will not be republished.

No comments were received by the agency after publication of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §254.004, which directs the Board to establish reasonable and necessary fees sufficient to cover the cost of administering the Board's duties.

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 August 23, 2019.

TRD-201902873

Alex Phipps

General Counsel

State Board of Dental Examiners

Effective date: September 12, 2019

Proposal publication date: July 19, 2019

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



CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.2

The State Board of Dental Examiners (Board) adopts an amendment to 22 TAC §104.2, concerning providers of continuing education. This amendment will clarify the process for addition or removal of approved providers from the Board's list, and will establish criteria for the Board or a committee of the Board to apply when considering addition, removal, or classification of providers. This amendment is adopted with no changes to the proposed text as published in the July 19, 2019, issue of the *Texas Register* (44 TexReg 3604), and will not be republished.

No comments were received by the agency after publication of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §257.005, which directs the Board to develop a process to evaluate and approve continuing education courses and evaluate the overall effectiveness of programs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201902876

Alex Phipps

General Counsel

State Board of Dental Examiners

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

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PART 6. TEXAS BOARD OF
PROFESSIONAL ENGINEERS

CHAPTER 133. LICENSING

SUBCHAPTER G. EXAMINATIONS

22 TAC §133.69

The Texas Board of Professional Engineers (Board) adopts an amendment to §133.69 concerning Waiver of Examinations with-out changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3423). The text of the rule will not be republished.

REASONED JUSTIFICATION FOR RULE ADOPTION

The examination on the Fundamentals of Engineering (FE) is considered a foundational qualification in the licensure of an engineer. The Board has authority to waive the exam for applicants who possess sufficient education and experience credentials. The adopted change to §133.69(d) limits an applicant from applying for a waiver of the FE exam if the applicant has failed the exam three or more times in any jurisdiction. This amendment does not prohibit an applicant from retaking the exam to achieve a passing score.

PUBLIC COMMENT

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide oral and/or written commentary concerning the adoption of the rule. The 30-day public comment period ended August 4, 2019.

The Board received one comment regarding the change to §133.69(d). A commenter asked for a delay to enact this rule change. The Board disagrees with the comment and responds that an additional delay is not necessary for the implementation of this rule as it has been under consideration by the Board since November 2018. No changes were made to the rule as proposed.

STATEMENT OF AUTHORITY

This amendment is adopted pursuant to Texas Occupations Code §1001.202, which authorizes the Board to adopt and enforce any rules, regulations or bylaws necessary to perform its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state. It is also adopted under the authority of §1001.304, which authorizes the Board to administer examinations and §1001.305, which authorizes the Board to waive, by rule, all or part of an examination.

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 August 26, 2019.

TRD-201902888

Lance Kinney, Ph.D., P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: September 15, 2019

Proposal publication date: July 5, 2019

For further information, please call: (512) 440-7723

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 165. MEDICAL RECORDS

22 TAC §165.5

The Texas Medical Board (Board) adopts amendments to §165.5, concerning Transfer and Disposal of Medical Records with non-substantive changes, described below, to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3424).

The amendments to §165.5 update and modernize the notice requirements when a physician leaves from or relocates a practice by giving physicians options as to methods of patient notification. Specifically, in subsection (b)(2), additional language is added to allow notices to be posted on the physician's website and for the use of electronic communications to notify patients. In subsection (f), the amendments provide exceptions from notice provisions for certain types of medical providers.

These adopted amendments to §165.5 help modernize the existing rule and allow physicians various mechanisms to notify patients, which promotes continuity of care, and eliminates the notice requirement for certain physicians.

The Board received public written comments from the Texas Medical Association (TMA).

TMA complains that the rule still requires physicians to utilize more than one method of notice and that certain forms of notice may not be feasible due to the lack of an office, as in telemedicine.

The Board's response: The Board understands, but has determined that allowing physicians multiple options under each notice requirement will better serve the public by ensuring adequate notice to patients while causing little inconvenience to the physician. Therefore, the Board declines making additional changes in this regard.

TMA also suggests that additional language should be added to subsection (b)(2)(C), relating to email notices to patients, to ensure that such notice is transmitted confidentially and in a manner that is compliant with HIPAA and state and federal law.

The Board's response: The Board agrees with TMA that the words "in a manner that is compliant with state and federal law" should be added to subsection b(2)(C)(ii) and adopts the rule amendment with the non-substantive change as described.

TMA requests that the Board include a safe harbor provision for physicians who make a "good faith effort" to notify patients in the manner required, but who are prevented from complying with the requirements by the owners of the practice.

The Board's response: The Board declines TMA's request to create such provision, as subsection (c) already provides a prohibition against interference by remaining physicians. Additionally, if a physician is found to be in violation of the notice requirements and is subject to investigation, the physician may present evidence of any "good faith efforts" that may have been thwarted by remaining physicians. Therefore, no additional carve out provision is necessary.

TMA asserts that the exceptions delineated in subsection (f)(2) and (3) will be construed by courts to mean that *only* those providing specific services described in (f)(3) will be deemed as ex-

empt from providing notice in the settings described under subsection (f)(2).

The Board's response: The Board believes that the proposed amendment, as written, is clear and the TMA's argument about judicial interpretation is speculative. The Board maintains that there is an "or" separating subsection (f)(2) and (f)(3), which clearly refutes TMA's argument and no further clarification is necessary.

TMA suggests further clarification that an outpatient clinic, associated with a hospital, is not included in the exception under subsection (f)(2)(A).

The Board's response: The Board disagrees with TMA because the definition of "hospital" as defined in the Texas Occupations Code and the Texas Health & Safety Code, clearly does not include out-patient clinics associated with the hospital. Therefore, no additional language is necessary.

Lastly, TMA requests that "pathology services in a setting described in paragraph (2) of this subsection" be added to subsection (f)(3) as an exception.

The Board's response: The Board agrees with TMA's suggestion and adopts the rule amendment with the additional language, a non-substantive change, as described.

For these reasons, the Board adopts the amendments with above-described non-substantive changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3424), and the amendments will be republished.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

§165.5. *Transfer and Disposal of Medical Records.*

(a) Required Notification of Discontinuance of Practice. Except as provided for in subsection (f) of this section, when a physician retires, terminates employment, or otherwise leaves a medical practice, he or she is responsible for:

(1) ensuring that patients receive reasonable notification and are given the opportunity to obtain copies of their records or arrange for the transfer of their medical records to another physician; and

(2) notifying the board when they are terminating practice, retiring, or relocating, and therefore no longer available to patients, specifying who has custodianship of the records, and how the medical records may be obtained.

(3) Employers of the departing physician as described in §165.1(b)(6) of this chapter are not required to provide notification, however, the departing physician remains responsible for providing notification consistent with this section.

(b) Method of Notification.

(1) Except as provided for in subsection (f) of this section, when a physician retires, terminates employment, or otherwise leaves a medical practice, he or she shall provide notice to patients of when the physician intends to terminate the practice, retire or relocate, and will no longer be available to patients, and offer patients the opportunity to obtain a copy of their medical records or have their records transferred.

(2) Notification shall be accomplished by:

(A) either:

(i) posting such notice on the physician's or practice website; or

(ii) publishing notice in the newspaper of greatest general circulation in each county in which the physician practices or practiced and in a local newspaper that serves the immediate practice area; and

(B) placing written notice in the physician's office; and

(C) notifying patients seen in the last two years of the physician's discontinuance of practice by either:

(i) sending a letter to each patient; or

(ii) sending an email to each patient, in a manner that is compliant with state and federal law.

(3) A copy of the posted notices shall be submitted to the Board within 30 days from the date of termination, sale, or relocation of the practice.

(4) Notices placed in the physician's office shall be placed in a conspicuous location in or on the facade of the physician's office, a sign, announcing the termination, sale, or relocation of the practice. The sign shall be placed at least thirty days prior to the termination, sale or relocation of practice and shall remain until the date of termination, sale or relocation.

(c) Prohibition Against Interference.

(1) Other licensed physicians remaining in the practice may not prevent the departing physician from posting notice and the sign, unless the departing physician is excepted from providing notice of his or her departure under subsection (f) of this section.

(2) A physician, physician group, or organization described in §165.1(b)(6) of this title (relating to Medical Records) may not withhold information from a departing physician that is necessary for notification of patients, unless the departing physician is excepted from providing notice of his or her departure under subsection (f) of this section.

(d) Voluntary Surrender or Revocation of Physician's License.

(1) Except as provided for in subsection (f) of this section, physicians who have voluntarily surrendered their licenses or have had their licenses revoked by the board must notify their patients, consistent with subsection (b) of this section, within 30 days of the effective date of the voluntary surrender or revocation.

(2) Physicians who have voluntarily surrendered their licenses or have had their licenses revoked by the board must obtain a custodian for their medical records to be approved by the board within 30 days of the effective date of the voluntary surrender or revocation.

(e) Criminal Violation. A person who violates any provision of this chapter is subject to criminal penalties pursuant to §165.151 of the Act.

(f) Exceptions to Required Notification of Discontinuance of Practice. A physician is not required to provide notice of his or her discontinuation of practice to patients as required in subsection (b) of this section if the physician:

(1) treated the patient while in a locum tenens position at a practice location for a period of no longer than six months at that location. For the purpose of this section, "locum tenens" is defined as a position in which a physician is employed or contracted on a temporary or substitute basis to provide physician services;

(2) only treated the patient in the following settings:

(A) a hospital, as defined under Texas Occupations Code Section 157.051(6);

(B) an emergency room;

(C) a birthing center; or

(D) an ambulatory surgery center; or

(3) only provided the following:

(A) anesthesia services in a setting described in paragraph (2) of this subsection; or

(B) radiology services based on an order by a treating physician or in a setting described in paragraph (2) of this subsection; or

(C) pathology services in a setting described in paragraph (2) of this subsection.

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 August 21, 2019.

TRD-201902835

Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.8

The Texas Medical Board approves the adoption of the repeal of §193.8, concerning Prescriptive Authority Agreements: Minimum Requirements. The repealed rule is being adopted as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3426). The repealed rule is not being republished.

No written comments were received regarding the repeal of §193.8. No one appeared in person to testify regarding the rules at the public hearing on August 16, 2019.

The repeal is adopted under the authority of the Texas Occupations Code Annotated, §153.001.

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 August 20, 2019.

TRD-201902821

Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016

22 TAC §193.17

The Texas Medical Board (Board) adopts amendments to §193.17, concerning Nonsurgical Medical Cosmetic Procedures. The amendments to §193.17 are being adopted without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3427). The adopted amendments will not be republished.

The amendments require posting of notice to patients of the identity and license number of the physician supervisor at a facility providing nonsurgical cosmetic procedures. It also requires posting of notice of how and where to file a complaint against a physician or physician assistant involved at these facilities. The rule enhances patient safety and awareness through increased transparency and accountability of the medical professionals involved in these types of medical procedures and facilities.

Written comments were received regarding the amendments to §193.17. No one appeared in person to testify regarding the rules at the public hearing on August 16, 2019.

Two written comments were received regarding §193.17. One comment was from Texas Aesthetic Nurses Coalition and supported the rule. One comment was from the Texas Medical Association (TMA). TMA generally supported the posting of notice to patients. But TMA claimed the rule, as written, creates confusion and a burden on a physician.

TMA complains that the rule could be viewed as requiring two different types of notice based on a reference to Chapter 178 in one section and Rule 178.3 in another section.

The Board's response: The Board understands, but has determined that when read as whole the rule is easily understood. The text clearly delineates the notice serving a two-fold purpose, how to file a complaint and identifying the practitioner who would be subject of a complaint.

TMA also suggests that the terms "each public area and treatment room or area" is vague. TMA urges posting in an "prominent location."

The Board's response: The Board disagrees with TMA. The rule provides more clarity as to where posting is required than "a prominent location." The rule insures that notices will be posted with increased visibility and in areas most likely to be seen by patients.

TMA complains that the rule requires posting by the facility rather than physician. TMA states the rule lacks clarity and could expose physicians to violations for "technical insufficiencies."

The Board's response: The Board does not understand what TMA means by technical insufficiencies. But Board disagrees with TMA. TMA is correct that TMB regulates physicians and not facilities. However, these facilities cannot operate with having a supervising physician. When a physician agrees to become involved at these facilities they assume responsibility for all medical procedures, including non-surgical cosmetic procedures, performed at the facility. The rule is very clear that if a physician chooses to become involved with a facility that information must be made readily known to the patients, so in the event of untoward events or other potential violation the responsible physician is readily identified.

Rule §193.17 is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for

the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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 August 20, 2019.

TRD-201902823

Scott Freshour

General Counsel

Texas Medical Board

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Proposal publication date: July 5, 2019

For further information, please call: (512) 305-7016

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.14

The Texas State Board of Pharmacy adopts a new rule §281.14, concerning Vendor Protest Procedures. The new rule is adopted without changes to the proposed text as published in the June 28, 2019, issue of the *Texas Register* (44 TexReg 3216). The rule will not be republished.

The new rule establishes policy and procedures for resolving vendor protests relating to purchasing issues, as required by section 2155.076 of the Government Code.

No comments were received.

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2019.

TRD-201902847

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

Executive Director

Texas State Board of Pharmacy

Effective date: September 10, 2019

Proposal publication date: June 28, 2019

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

22 TAC §281.15

The Texas State Board of Pharmacy repeals §281.15, concerning Vehicle Inscription Information. The rule is repealed without changes to the text as published in the June 28, 2019, issue of the *Texas Register* (44 TexReg 3218) and the rules will not be republished.

The repeal of §281.15 provides for a more organized subchapter by moving the language from the previous §281.15 to an amended §281.19, allowing the agency to adopt a new §281.15, concerning Negotiated Rulemaking.

No comments were received.

The rule is repealed 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 repeal: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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 §281.15

The Texas State Board of Pharmacy adopts new rule §281.15, concerning Negotiated Rulemaking. The new rule is adopted without changes to the proposed text as published in the June 28, 2019, issue of the *Texas Register* (44 TexReg 3218).

The new rule establishes policy and procedures for the use of negotiated rulemaking for the adoption of board rules in appropriate situations, as required by section 554.0011 of the Pharmacy Act.

No comments were received.

The new rule is adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code) and §481.003 of the Texas Controlled Substances Act (Chapter 481, Texas Health and Safety 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 Board interprets §481.003 of the Texas Controlled Substances Act as authorizing the agency to adopt rules to administer §§481.075 - 481.0766 of the Texas Controlled Substances Act.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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 §281.16

The Texas State Board of Pharmacy adopts new rule §281.16, concerning Alternative Dispute Resolution. The new rule is adopted without changes to the proposed text as published in the June 28, 2019, issue of the *Texas Register* (44 TexReg 3219).

The new rule establishes policy and procedures for the use of alternative dispute resolution to resolve internal and external disputes, as required by section 554.0011 of the Pharmacy Act.

No comments were received.

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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 §281.19

The Texas State Board of Pharmacy adopts amendments to §281.19, concerning Restrictions on Assignment of Vehicles. These amendments are adopted with changes to the proposed text as published in the June 28, 2019, issue of the *Texas Register* (44 TexReg 3220). The Board corrected the agency that vehicles may be registered to under §554.009 to be the Texas Department of Motor Vehicles.

The amendments, if adopted, update the section title, add updated vehicle inscription information (formerly located in §281.15), and remove outdated references to an agency pool car.

No comments were received.

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

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

§281.19. *Vehicles.*

(a) Vehicle Inscription Information.

(1) Exemption. As specified in §554.009 of the Act and §721.003 of the Transportation Code, vehicles assigned to or used by the compliance or investigation divisions for enforcement of pharmacy laws and rules are exempt from bearing the inscription required by §721.002 of the Transportation Code. These vehicles are to be used primarily in the inspection of pharmacies and the investigation of violations of state and federal laws and rules relating to the practice of pharmacy. In addition, as specified in §554.009 of the Act, the vehicles may be registered with the Texas Department of Motor Vehicles in an alias name for investigative personnel.

(2) Purpose. The purpose of exempting these vehicles from the inscription requirements of §721.002 of the Transportation Code is to increase the effectiveness of agency field employees in detecting and investigating violations of state and federal laws relating to the practice of pharmacy, thereby allowing compliance and investigative personnel to accomplish their tasks undetected, and to provide a greater degree of safety for these staff and the state property being used in the enforcement and a greater degree of case integrity.

(b) Restrictions on Assignments of Vehicles.

(1) Each agency vehicle will be assigned to an individual field employee.

(2) The agency may assign a vehicle to a board member or an individual administrative or executive employee:

(A) on a temporary basis if field personnel are not available to assume responsibility for the car; or

(B) on a regular basis only if the agency makes a written documented finding that the assignment is critical to the needs and mission of the agency.

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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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 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.11

The Texas State Board of Pharmacy adopts amendments to §283.11, concerning Examination Retake Requirements. These amendments are adopted without changes to the proposed text as published in the June 28, 2019, issue of the *Texas Register* (44 TexReg 3221).

The amendments update the examination retake requirements and remove outdated references to an examination retake committee.

No comments were received.

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

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 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 §291.6

The Texas State Board of Pharmacy adopts amendments to §291.6, concerning Pharmacy License Fees. These amendments are adopted with changes to the proposed text as published in the June 28, 2019, issue of the *Texas Register* (44 TexReg 3222). The Board adjusted the amount of the fees based on updated information.

The amendments increase pharmacy license fees based on expected expenses.

The Board received comments from the Alliance of Independent Pharmacists of Texas requesting more information on the allocation of funds.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control

and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

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

§291.6. *Pharmacy License Fees.*

(a) Initial License Fee. The fee for an initial license shall be \$507 for the initial registration period.

(b) Biennial License Renewal. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacy licenses provided under the Act §561.002.

(c) Renewal Fee. The fee for biennial renewal of a pharmacy license shall be \$504 for the renewal period.

(d) Duplicate or Amended Certificates. The fee for issuance of a duplicate pharmacy license renewal certificate shall be \$20. The fee for issuance of an amended pharmacy license renewal certificate shall be \$100.

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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TRD-201902853

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

Executive Director

Texas State Board of Pharmacy

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Proposal publication date: June 28, 2019

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



CHAPTER 295. PHARMACISTS

22 TAC §295.5

The Texas State Board of Pharmacy adopts amendments to §295.5, concerning Pharmacist License or Renewal Fees. These amendments are adopted with changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3429). The Board adjusted the amount of the fees based on updated information.

The amendments increase pharmacist license fees based on expected expenses.

The Board received comments from the Alliance of Independent Pharmacists of Texas requesting more information on the allocation of funds.

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

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

§295.5. *Pharmacist License or Renewal Fees.*

(a) Biennial Registration. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacist licenses provided under the Pharmacy Act, §559.002.

(b) Initial License Fee.

(1) The fee for the initial license shall be \$332 for a two-year registration.

(2) New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated based on the assigned expiration date.

(c) Renewal Fee. The fee for biennial renewal of a pharmacist license shall be \$329 for a two-year registration.

(d) Exemption from fee. The license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years or who is at least 72 years old shall be renewed without payment of a fee provided such pharmacist is not actively practicing pharmacy. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this subsection may not engage in the active practice of pharmacy without first paying the renewal fee as set out in subsection (c) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2019.

TRD-201902854

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

Executive Director

Texas State Board of Pharmacy

Effective date: October 1, 2019

Proposal publication date: July 5, 2019

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



22 TAC §295.8

The Texas State Board of Pharmacy adopts amendments to §295.8, concerning Continuing Education Requirements. These amendments are adopted without changes to the proposed text as published in the June 28, 2019, issue of the *Texas Register* (44 TexReg 3223).

The amendments clarify the definition of initial license period, remove an outdated reference to the Commission for Certification in Geriatric Pharmacy, and correct grammatical errors.

No comments were received.

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

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

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 August 21, 2019.

TRD-201902855

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

Executive Director

Texas State Board of Pharmacy

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Proposal publication date: June 28, 2019

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



TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.3, 703.10, 703.14, 703.25

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to 25 TAC §§703.3, 703.10, 703.14, and 703.25 without changes to the proposed amendments as published in the May 31, 2019, issue of the *Texas Register* (44 TexReg 2698), therefore, the rules will not be republished. The amendments are related to Request for Applications modifications on the Institute's website, leave of absences, no cost extension requests review and approval, and approval of grantee budget changes and transfers.

Reasoned Justification

In §703.3(b), the proposed change clarifies that modifications to Request for Applications (RFAs) will be available on CPRIT's website. The amendment to §703.10(c)(22) requires a grant recipient to request approval for a Principal Investigator, Program Director, or Company Representative's temporary leave of absence. Proposed changes to §703.14(c)(3) eliminate automatic approval of a grant recipient's first no cost extension request. Finally, the amendment to §703.25(e) clarifies when a grant recipient's budget change or transfer is automatically approved and explains that CPRIT may review and reverse approval, depending on certain circumstances.

Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments to §§703.3, 703.10, 703.14, and 703.25.

The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 22, 2019.

TRD-201902859

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Effective date: September 11, 2019

Proposal publication date: May 31, 2019

For further information, please call: (512) 305-8487

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.25

The Texas Board of Criminal Justice adopts amendments to §151.25, concerning Tobacco and Vapor Products, without changes to the proposed text as published in the July 5, 2019, issue of the *Texas Register* (44 TexReg 3431); therefore, the rule will not be republished.

The adopted amendments are necessary to update the language in light of changing technology, to add interns and volunteers to the scope of the rule, and to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §§492.013, 494.010.

Cross Reference to Statutes: None.

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 August 26, 2019.

TRD-201902879

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Effective date: September 15, 2019

Proposal publication date: July 5, 2019

For further information, please call: (936) 437-6700

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PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. ACCREDITATION

37 TAC §651.4

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 Texas Administrative Code §651.4 without changes to the text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3777) and will not be republished. The amendment makes a non-substantial edit to an acronym in the Commission's list of recognized accrediting bodies. The amendment is necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The amendment is made in accordance with the Commission's accreditation authority under Tex. Code Crim. Proc. art. 38.01 §4-d.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4-d, Code of Criminal Procedure.

Cross reference to statute. The amendment affects 37 Texas Administrative Code Chapter §651.4.

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 August 26, 2019.

TRD-201902893

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: September 15, 2019

Proposal publication date: July 26, 2019

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

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SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.202

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.202 without changes to the text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3778) and will not be republished. The amendments provide clarification to the Commission's definition of professional misconduct provided in this subsection to reflect definitions in Code of Criminal Procedure Article 38.01 that were not available when the Commission first defined the term. The amendments are necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The amendments are made in accordance with the Commission's authority under Article 38.01 §4-a, Code of Criminal Procedure with respect to the Commission's Forensic Analyst Licensing program.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4-a, Code of Criminal Procedure.

Cross reference to statute. The amendments affect 37 Texas Administrative Code Chapter §651.202.

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 August 26, 2019.

TRD-201902891

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: September 15, 2019

Proposal publication date: July 26, 2019

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

37 TAC §651.203, §651.207

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.203 and §651.207 without changes to the text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3779) and will not be republished. The amendments remove document examination from the list of forensic disciplines subject to Commission licensing requirements. The amendments are necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The amendments are made in accordance with the Commission's authority under Article 38.01 §4-a, Code of Criminal Procedure with respect to the Commission's Forensic Analyst Licensing program.

Summary of Comments. No comments were received regarding the amendments to these sections.

Statutory Authority. The amendments are adopted under Article 38.01 §4-a, Code of Criminal Procedure.

Cross reference to statute. The amendment affects 37 Texas Administrative Code Chapter §651.203 and §651.207.

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 August 26, 2019.

TRD-201902892

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: September 15, 2019

Proposal publication date: July 26, 2019

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



37 TAC §651.206

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.206 without changes to text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3783) and will not be republished. The amendments expand the list of exemptions under which a forensic analyst is not required to comply with forensic analyst license requirements. The amendments are necessary to reflect adoptions made by the Commission at its May 3, 2019, quarterly meeting. The amendments are made in accordance with the Commission's authority under Article 38.01 §4-a, Code of Criminal Procedure with respect to the Commission's Forensic Analyst Licensing program.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4-a, Code of Criminal Procedure.

Cross reference to statute. The amendments affect 37 Texas Administrative Code Chapter §651.206.

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 August 26, 2019.

TRD-201902890

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: September 15, 2019

Proposal publication date: July 26, 2019

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



37 TAC §651.213

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.213, concerning forensic analyst licensing of military service members, veterans and spouses, without changes to the text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3785). The rule text will not be republished.

The amendments relate to the forensic analyst licensing of military service members, veterans and spouses to provide an option for Commission recognition of a license from another state with similar requirements for military spouses in response to the 86th Legislature's SB-1200. The amendments are made in accordance with the Commission's authority under Article 38.01 §4-a, Code of Criminal Procedure with respect to the Commission's Forensic Analyst Licensing program.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4-a, Code of Criminal Procedure.

Cross reference to statute. The amendments affect 37 Texas Administrative Code Chapter 651.213.

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 August 26, 2019.

TRD-201902894

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: September 15, 2019

Proposal publication date: July 26, 2019

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



37 TAC §651.216, §651.217

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.216 and §651.217 with changes to the text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3786) and will be republished. The change is to delete duplicative wording. The amendments address the 86th Legislature's passage of SB-284 which amended Article 38.01 §4-c, Code of Criminal Procedure relating to disciplinary proceedings applicable to a licensed forensic analyst and address the 86th Legislature's passage of HB-1342 which amended Chapter 53, Occupations Code relating to consequences of criminal convictions and licensure. The amendments are made in accordance with the Commission's authority under Article 38.01 §4-c, Code of Criminal Procedure with respect to disciplinary action by the Commission against a forensic analyst license holder.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4-c, Code of Criminal Procedure.

Cross reference to statute. The amendment affects 37 Texas Administrative Code Chapter 651.216 and 651.217.

§651.216. *Disciplinary Action.*

(a) The Commission may take disciplinary action against a license holder or applicant for a license under certain limited circumstances as set forth in Article 38.01, Code of Criminal Procedure.

(b) Professional Misconduct Finding. On a determination by the Commission that a license holder or applicant for a license has committed professional misconduct in accordance with the definition provided in §651.202 of this subchapter (relating to Definitions) and under Article 38.01, Code of Criminal Procedure or violated Article 38.01, Code of Criminal Procedure, or a rule or order of the Commission under Article 38.01, Code of Criminal Procedure, the Commission may:

- (1) revoke or suspend the person's license;
- (2) refuse to renew the person's license;
- (3) reprimand the license holder; or
- (4) deny the person a license.

(c) Probation. The Commission may place on probation a person whose license is suspended. If a license suspension is probated, the Commission may require the license holder to:

- (1) report regularly to the Commission on matters that are the basis of the probation; or
- (2) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the Commission in those areas that are the basis of the probation.

(d) Disciplinary Proceedings by the Judicial Branch Certification Commission. The Commission shall give written notice by certified mail of a determination described by subsection (a) of this section to a license holder who is the subject of the determination. The notice must:

- (1) include a brief summary of the alleged misconduct or violation;
- (2) state the disciplinary action taken by the Commission; and
- (3) inform the license holder of the license holder's right to a hearing before the Judicial Branch Certification Commission on the occurrence of the misconduct or violation, the imposition of the disciplinary action, or both.

(e) Hearing Request. Not later than the 20th day after the date the license holder receives the notice under subsection (d) of this section, the license holder may request a hearing by submitting a written request to the Judicial Branch Certification Commission. If the license holder fails to timely submit a request, the Commission's disciplinary action becomes final and is not subject to review by the Judicial Branch Certification Commission.

(f) Judicial Branch Certification Commission Hearing. If the license holder requests a hearing, the Judicial Branch Certification Commission shall conduct a hearing to determine whether there is substantial evidence to support the determination under subsection (a) of this section that the license holder committed professional misconduct or violated this subchapter or a Commission rule or order under this subchapter. If the Judicial Branch Certification Commission

upholds the determination, the Judicial Branch Certification Commission shall determine the type of disciplinary action to be taken. The Judicial Branch Certification Commission shall conduct the hearing in accordance with the procedures provided by Subchapter B, Chapter 153, Government Code, as applicable, and the rules of the Judicial Branch Certification Commission.

(g) License Status.

(1) If a license holder makes timely and sufficient application for the renewal of a license, the existing license does not expire until the application has been finally determined by the Commission. If the application is denied or the terms of the new license are limited, the existing license does not expire until the last day for seeking review of a Commission decision or a later date fixed by order of the Judicial Branch Certification Commission or Administrative Regional Presiding Judges.

(2) A revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of Commission proceedings:

(A) the Commission gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action; and

(B) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license.

(3) A Forensic Analyst License remains valid unless it expires without timely application for renewal, is amended, revoked, suspended, annulled or withdrawn, or the denial of a renewal application becomes final. The term or duration of a license is tolled during the period the license is subjected to review by the Judicial Branch Certification Commission or Administrative Regional Presiding Judges. However, the term or duration of a license is not tolled if, during review by the Judicial Branch Certification Commission or Administrative Regional Presiding Judges, the licensee engages in the activity for which the license was issued.

(h) Interpreters for Deaf or Hearing Impaired Parties and Witnesses.

(1) In an appeal of a disciplinary action by the Commission, the Commission shall provide an interpreter whose qualifications are approved by the Texas Department of Assistive and Rehabilitative Services to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.

(2) In this section, "deaf or hearing impaired" means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.

(i) Informal Disposition of Disciplinary Action Appeals. Unless precluded by law, an informal disposition may be made of an appeal of a disciplinary action by the Commission by:

- (1) stipulation;
- (2) agreed settlement;
- (3) consent order; or
- (4) default.

§651.217. *Ineligibility for License Based on Criminal Conviction.*

(a) A proceeding before the Commission to establish factors required to be considered under this section is governed by Chapter 53, Government Code. Any appeals proceeding in response to disciplinary action taken by the Commission in the form of license denial, revocation, suspension or other action taken by the Commission under

this subsection is governed by Article 38.01 §4-c, Code of Criminal Procedure.

(b) Guidelines for consideration of criminal convictions. If an applicant has a criminal conviction above a Class C misdemeanor, the applicant may not be qualified to hold a forensic analyst license.

(1) Convictions that may trigger a denial. Subject to paragraph (7) of this subsection, the Commission may suspend or revoke a forensic analyst license, disqualify a person from receiving a license, refuse to renew a person's license, or deny to a person the opportunity to take the general forensic licensing examination on the grounds the person has been convicted of:

(A) an offense that directly relates to the duties and responsibilities associated with an analyst's license;

(B) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(C) a sexually violent offense as defined by Article 62.001, Code of Criminal Procedure.

(2) A forensic analyst license holder's license may be revoked on the license holder's imprisonment following a felony conviction, felony community supervision, revocation of parole, or revocation of mandatory supervision.

(3) An offense from another state containing elements substantially similar to the enumerated offenses under the Texas Penal Code shall be considered under this section the same way as the offense would have been considered had it been committed in Texas.

(4) Offenses that apply to category paragraph (1)(A) of this subsection because they directly relate to the duties and responsibilities associated with an analyst's license may include, but are not limited to:

(A) misrepresentation (e.g., fraud, extortion, bribery, theft by check, and deceptive business practices);

(B) failure to register as a sex offender (as required by the Texas Code of Criminal Procedure, Chapter 62);

(C) property crimes, such as theft or burglary;

(D) crimes against persons, such as homicide, kidnapping, and assault;

(E) drug crimes, such as possession;

(F) multiple DWI and DUI crimes;

(G) all felony convictions; and

(H) Misdemeanors above a Class C misdemeanor and felony convictions considered by Texas courts to be crimes of moral turpitude.

(5) Consequences. In the event of a criminal conviction, the Commission may take one of the following courses of action:

(A) declare a prospective applicant unsuitable for a license;

(B) deny a renewal application for an existing license;

(C) revoke or suspend an existing license; or

(D) deny a person the opportunity to take the general forensic analyst licensing examination.

(6) Determining whether conviction directly relates to the duties and responsibilities associated with the analyst's license. In determining whether a criminal conviction directly relates to the duties

and responsibilities associated with the analyst's license, the Commission shall consider each of the following factors:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the analyst's occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(D) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the analyst's work; and

(E) any correlation between the elements of the crime and the duties and responsibilities of the analyst's work.

(7) Additional factors for consideration after determining conviction directly relates to occupation. If the Commission determines under paragraph (6) of this subsection that a criminal conviction directly relates to the duties and responsibilities associated with the analyst's license, the Commission considers the following in determining whether to take an action authorized by paragraph (1) of this subsection in addition to the factors listed in paragraph (6) of this subsection:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(F) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(G) other evidence of the person's fitness, including letters of recommendation.

(8) An applicant has the responsibility, to the extent possible, to obtain and provide to the Commission the recommendations described by paragraph (7)(G) of this subsection.

(c) Notice and Review of Suspension, Revocation or Denial of License. If the Commission suspends or revokes a license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of an offense, the Commission shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification, including any factor considered under paragraphs (6) or (7) of this subsection that served as the basis for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by §651.216(d)-(f) of this title (relating to Disciplinary Action); and

(3) the earliest date the person may appeal the action of the Commission.

(d) Presiding Officer or Designee Authority to Approve Applications. The Commission's Presiding Officer or Designee may unilaterally approve an application where a criminal background check returns a misdemeanor conviction or convictions older than ten (10)

years from the date the application is submitted and the Presiding Officer or Designee has determined the individual is eligible for a license notwithstanding the misdemeanor conviction or convictions.

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 August 26, 2019.

TRD-201902896

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: September 15, 2019

Proposal publication date: July 26, 2019

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



37 TAC §651.218

The Texas Forensic Science Commission ("Commission") adopts amendments to 37 Texas Administrative Code §651.218 with changes to the text as published in the July 26, 2019, issue of the *Texas Register* (44 TexReg 3790). The amendments clarify the Commission's guidelines for consideration of criminal convictions for license applicants pursuant to the 86th Legislature's changes in HB 1342. The amendments are made in accordance with the Commission's authority under Article 38.01 §4-a, Code of Criminal Procedure with respect to the Commission's Forensic Analyst Licensing program. The rule will be republished.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Article 38.01 §4-a, Code of Criminal Procedure.

Cross reference to statute. The amendments affect 37 Texas Administrative Code §651.218.

§651.218. *Preliminary Evaluation of License Eligibility Based on Criminal History.*

(a) Request for Criminal History Evaluation Letter. A person may request the Commission issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take the examination for an initial license; and

(2) has reason to believe he or she is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) The request must state the basis for the person's potential ineligibility.

(c) Authority to Investigate. The Commission has the same powers to investigate a request submitted under this section and the requestor's eligibility that the Commission has to investigate a person applying for a license.

(d) Determination of Eligibility; Letter. If the Commission determines that a ground for ineligibility does not exist, the Commission shall notify the requestor in writing of the Commission's determination on each ground of potential ineligibility.

(e) Determination of Ineligibility; Letter. If the Commission determines that the requestor is ineligible for a license, the Commission shall issue a letter setting out each basis for potential ineligibility, including any factor considered under §651.217(b)(6) or §651.217(b)(7) of this subchapter that served as the basis for potential ineligibility, and the Commission's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the Commission at the time the letter is issued, the Commission's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

(f) The Commission must provide notice of determination of eligibility or ineligibility not later than the 90th day after the date the Commission receives the request.

(g) The Commission may charge a person requesting an evaluation under this section a \$25 fee. Fees adopted by the Commission under this section must be in an amount sufficient to cover the cost of administering this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 26, 2019.

TRD-201902895

Leigh Savage

Associate General Counsel

Texas Forensic Science Commission

Effective date: September 15, 2019

Proposal publication date: July 26, 2019

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



REVIEW OF AGENCY RULES

notices of *intention to review*, which invite public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

State Securities Board

Title 7, Part 7

The State Securities Board (Agency), beginning September 2019, will review and consider for readoption, revision, or repeal Chapter 109, Transactions Exempt from Registration; Chapter 111, Securities Exempt from Registration; and Chapter 139, Exemptions by Rule or Order, in accordance with Texas Government Code, §2001.039, which requires rule review every four years. The rules to be reviewed are located in Title 7, Part 7, of the Texas Administrative Code. The text of the rule sections will not be published. The text of these rules may be found in the Texas Administrative Code, Title 7, Part 7 or through the Board's website at www.ssb.texas.gov/texas-securities-act-board-rules.

The Agency has conducted a preliminary review of these chapters and determined the reasons for initially adopting the chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether any changes are needed. Changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of a subsequent issue of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001; thus this notice to review has no effect on the chapters as they currently exist. Readopted rules will be noted in a subsequent issue of the *Texas Register's* "Review of Agency Rules" section without publication of the text.

Comments or suggestions on the proposal must be in writing and will be accepted for 30 days following publication of this notice in the *Texas Register*. Written comments should be submitted to Marlene K. Sparkman, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167 or faxed to (512) 305-8336. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication. Comments received will be reviewed and discussed in a future Board meeting.

Issued in Austin, Texas on August 26, 2019.

TRD-201902889

Travis J. Iles

Securities Commissioner

State Securities Board

Filed: August 26, 2019

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

◆ ◆ ◆
Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 294, Priority Groundwater Management Areas.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 294 continue to exist.

Comments regarding suggested changes to the rules in Chapter 294 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 294. Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2019-060-294-OW. Comments must be received by October 1, 2019. For further information, please contact Kathy Ramirez, Water Availability Division, at (512) 239-6757.

TRD-201902867

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 23, 2019

◆ ◆ ◆
Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.4, concerning Public Presentations and Comments to the Texas Board of Criminal Justice. 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 §151.4.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register*.

TRD-201902878
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: August 26, 2019



The Texas Board of Criminal Justice files this notice of intent to review §151.77, concerning Purchasing and Contracting with Historically Underutilized Businesses (HUBs). 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 §151.77.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register*.

TRD-201902880
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: August 26, 2019



The Texas Board of Criminal Justice files this notice of intent to review §163.37, concerning Reports and Records. 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 §163.37.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register*.

TRD-201902882

Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: August 26, 2019



The Texas Board of Criminal Justice files this notice of intent to review §195.61, concerning the Method of Payment for Parole Supervision and Administrative Fees. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register*.

TRD-201902884
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: August 26, 2019



Adopted Rule Reviews

Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 291, (§§291.1 - 291.3, 291.5 - 291.11, 291.14 - 291.19, 291.22 - 291.24, 291.27 - 291.29), concerning Pharmacies (All Classes of Pharmacies, Chapter 291, (§§291.91 - 291.94), concerning Pharmacies (Clinic Pharmacy (Class D)), Chapter 291, (§§291.101 - 291.106), concerning Pharmacies (Non-Resident Pharmacy (Class E)), and Chapter 295, (§§295.1 - 295.9, 295.11 - 295.16), concerning Pharmacists, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the June 28, 2019, issue of the *Texas Register* (44 TexReg 3303).

No comments were received.

The agency finds the reason for adopting the rule continues to exist.

TRD-201902856
Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director
Texas State Board of Pharmacy
Filed: August 21, 2019



IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Notice of Contract Awards

Notice of Awards: Pursuant to Chapter 403, Chapter 2254, Subchapter A of the Texas Government Code, and Chapter 111, Subchapter A, Section 111.0045 of the Texas Tax Code, Texas Comptroller of Public Accounts ("Comptroller") announces this notice of contract awards.

Comptroller's Request for Qualifications 223b ("RFQ") related to these contract awards was published in the April 12, 2019, issue of *Texas Register* (44 TexReg 1923).

The examiners will provide Professional Contract Examination Services as authorized by Subchapter A, Chapter 111, Section 111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

Comptroller announces that twenty-three (23) contracts were awarded as follows:

Amin J. Mohd, 2407 Calumet Drive, Sugar Land, Texas 77478-1860. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Dan A. Northern, 2201 Woodland Hills Lane, Weatherford, Texas 76087. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Dibrell P. Dobbs dba State Tax Consulting Group, 2906 Timber Gardens Court, Arlington, Texas 76016. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Fabian Avina, 1106 Knights Cross Drive, San Antonio, Texas 78258-2951. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Flor H. Holmes, 30 Fela Drive, Parlin, New Jersey 08859. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Garrett State Tax Service, Inc., 14970 Country Road 369, Winona, Texas 75792-6012. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Hive City Accounting, LLC, 36 Encino Loma, Beeville, Texas 78102. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Homer Max Wiesen, CPA, 1009 Panhandle Street, Denton, Texas 76201-2841. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Judy Hannah, 14514 W. 3rd Avenue, Golden, Colorado 80401. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

KGVG Advisors, LLC, 4204 Far West Blvd., Austin, Texas 78731. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Marina Roy Buenaventura, CPA, 4042 Cheena Drive, Houston, Texas 77025-4702. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Max Dwain Martino, PC, 550 Westcott, Suite 355, Houston, Texas 77007. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Michelle Duplechain, 1007 Tennyson Drive, Pearland, Texas 77584. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have ex-

amination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Paul Hernandez, 5402 Fairdale Lane, Houston, Texas 77056. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Ramiro J. Garza, 913 Rio Grande Drive, Mission, Texas 78572. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

RFabyan Consulting LLC, 1533 Summerfield Drive, Allen, Texas 75002. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

State Tax Consulting, LLC, 1400 Preston Road, Suite 400, Plano, Texas 75093-5189. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Stephanie (Clark) Jackson, 6618 Honeyridge Lane, San Antonio, Texas 78239. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Stites Pybus LLC, 2925 Cuero Cove, Round Rock, Texas 78681. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Terra Hillman, 1121 Hodges Street, Lake Charles, Louisiana 70601. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Vernice Seriale, Jr., 11612 Cross Spring Drive, Pearland, Texas 77584. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Wayne A. Powe, 5501 Independence Pkwy., Suite 107, Plano, Texas 75023. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

Yunping Hu, 6705 Via Correto Drive, Austin, Texas 78749. Examinations will be assigned in \$64,000- \$96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than \$192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2019, through August 31, 2020, with two (2) one (1) year options to renew.

The twenty-three (23) contracts above are the final awards that the Comptroller will make under this RFQ.

TRD-201902956
Cindy Stapper
Contracts Attorney
Comptroller of Public Accounts
Filed: August 28, 2019

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/02/19 - 09/08/19 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 09/02/19 - 09/08/19 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 08/01/19 - 08/31/19 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 08/01/19 - 08/31/19 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/19 - 12/31/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 10/01/19 - 12/31/19 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 10/01/19 - 12/31/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101¹ for the period of 10/01/19 - 12/31/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 10/01/19 - 12/31/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 10/01/19 - 12/31/19 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 10/01/19 - 12/31/19 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/19 - 09/30/19 is 5.25% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 09/01/19 - 09/30/19 is 5.25 for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

⁴ Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-201902919

Leslie Pettijohn

Commissioner

Office of the Consumer Credit Commissioner

Filed: August 27, 2019



Texas Council for Developmental Disabilities

Correction of Error

The Texas Council for Developmental Disabilities submitted to the Office of the Secretary of State, a miscellaneous document on August 14, 2019, to be published in the August 23, 2019, issue of the *Texas Register*. Due to a Texas Register error this document "Request for Proposals: Texas Council for Developmental Disabilities Policy Fellow Projects" was inadvertently omitted.

This Request for Proposal is published in the September 6, 2019, issue of the *Texas Register*.

TRD-201902965



Request for Proposals: Research of Substance Use Disorder and People with IDD

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for an organization to research the current state of substance use disorder in the intellectual and developmental disabilities (IDD) population.

The intent of offering funding for the project described in this Request for Proposals (RFP) is to expand the amount of information available regarding people with IDD who experience substance use disorder, including opioid misuse. The project would include a review of existing data on substance use and misuse in this population, identify best practices and resources available to address prevention and treatment for individuals with IDD, and recommendations that can be used for the improvement and expansion of existing services.

Eligible applicants that could receive a grant from TCDD would include medical institutions, institutions of higher education, government agencies, nonprofit organizations, or other relevant organizations. Individuals are not eligible to receive a grant.

TCDD has approved funding for one project for up to \$125,000 for one year. Funds available for this project are provided to TCDD by

the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained through DD Suite (www.ddsuite.org). All questions pertaining to this RFP should be directed in writing to Danny Fikac via email at grants2@tcdd.texas.gov. Mr. Fikac may also be reached by telephone at (512) 437-5432.

Deadline: The deadline to submit a proposal is Friday, Nov. 15, 2019. Proposals must be submitted through DD Suite. Proposals will be considered during TCDD's February 2020 Council Meeting (subject to change). Late proposals will not be considered.

TRD-201902931

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: August 28, 2019



Request for Proposals: Texas Council for Developmental Disabilities Policy Fellows Projects

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for organizations in Texas to partner with TCDD to hire a TCDD Policy Fellow and provide the skills and connections necessary for the fellow to cultivate a meaningful career in disability policy.

The intent of offering funding for the project described in this Request for Proposals (RFP) is to increase the number of policy professionals with the requisite skills, knowledge, and experience to engage in disability-related policy activities. By providing entities with the funds and support to increase the knowledge and availability of new leaders to take on challenging assignments in public policy, the State of Texas will improve its capacity to create systems change so that people with disabilities are fully included in their communities and exercise control over their own lives. Grantees will hire a fellow and partner with TCDD to provide advanced guidance and technical assistance, and also help the fellow select a mentor who can provide historical knowledge.

Applicants will need to clearly and consistently demonstrate that the focus and goal of their project will be training and guiding the Fellow through the duration of TCDD's funding. Eligible applicants that could receive a grant from TCDD would include nonprofit organizations, government agencies, institutions of higher education, or other relevant organizations.

TCDD has approved funding for up to 10 projects for up to \$77,500 per organization for up to two years. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this RFP may be obtained through TCDD's website at www.tcdd.texas.gov. All questions pertaining to this RFP should be directed in writing to Scott Daigle via email at Scott.Daigle@tcdd.texas.gov. Mr. Daigle may also be reached by telephone at (512) 437-5417.

Deadline: Proposals must be submitted through DD Suite (www.ddsuite.org) and will be reviewed by TCDD according to the following schedule: applications received between Aug. 23, 2019, and October 4, 2019, may be reviewed at the November 2019 TCDD Council Meeting; applications received between October 5, 2019, and December 6, 2019, may be reviewed at the February 2020 TCDD Council Meeting. Proposals will not be accepted outside of these due dates.

TRD-201902661

Beth Stalvey

Executive Director

Texas Council for Developmental Disabilities

Filed: August 14, 2019



Texas Education Agency

Request for Applications Concerning the 2020-2021 Principal Residency Cycle 3 Grant

Filing Date. August 28, 2019

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-18-105 is authorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended by P.L. 114-95, Every Student Succeeds Act (ESSA), Title II, Part A.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-18-105 from eligible applicants: Local educational agencies (LEAs) with at least one campus labeled Improvement Required per the 2019 Accountability Ratings and/or with at least one campus labeled Targeted, Additional Targeted, or Comprehensive per the 2019-2020 Title I Status.

Description. This grant program seeks to provide LEAs with an opportunity to build strong campus leaders and help support internal leadership pipelines through full-time, year-long principal residencies. LEAs that are awarded this grant will (1) identify strong principal residents from among their current staff through a targeted recruitment and selection process; (2) partner with an effective principal educator preparation program (EPP) that provides residents with course content focused on best practices in campus leadership, including a concentrated focus on instructional leadership; (3) design and implement a year-long, full-time residency with a focus on authentic campus-based leadership experiences in partnership with the EPP.

As part of this grant program, LEAs and EPP partners must provide residents with a year-long, full-time residency consisting of (1) sustained and rigorous clinical learning in an authentic school setting; (2) evidence-based coursework focused on best practices in campus leadership, including a concentrated focus on instructional leadership; (3) ongoing support from an effective mentor principal or school leader; (4) authentic leadership opportunities; and (5) an opportunity to practice and be evaluated in a school setting.

Dates of Project. The 2020-2021 Principal Residency Cycle 3 Grant will be implemented during the 2019-2020 and 2020-2021 school years. Applicants should plan for a starting date of no earlier than February 1, 2020, and an ending date of no later than August 30, 2021. Up to two years of continuation funding may be awarded dependent on the availability of funds and the LEAs effective participation in the

grant program. The anticipated dates of the two continuation grant periods are September 1, 2021-August 30, 2022, and September 1, 2022-August 30, 2023.

Project Amount. Approximately \$5,247,546 is available for funding the 2020-2021 Principal Residency Cycle 3 Grant Program. It is anticipated that approximately 15 grants will be awarded ranging in amounts from \$70,000 to \$700,000. This project is funded 100 percent with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at <http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/Grant-ProgramSearch.aspx> for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to Heather.Salaz@tea.texas.gov, the TEA email address identified in the program guidelines of the RFA, no later than Monday, October 7, 2019. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Monday, October 14, 2019. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Monday, November 11, 2019, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas 78701 or mailed to Document Control Center, Grants Administration Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

TRD-201902929

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: August 28, 2019



Request for Training Programs on the Use of a Bleeding Control Station in Public Schools

Filing Date. August 28, 2019

Description. The Texas Education Agency (TEA) is publishing notification that traumatic injury response programs focused on the use of bleeding control stations may be submitted for review. The purpose of the review process is to assist school districts in meeting requirements of the Texas Education Code (TEC), §38.030, as added by House Bill (HB) 496, 86th Texas Legislature, 2019. New TEC §38.030, requires TEA to approve training for the use of a bleeding control station in the event of an injury to another person. Additionally, TEC, §38.030, requires each school district and open-enrollment charter school to develop a protocol for school employees to follow in the event of a traumatic injury. This protocol must require that the following personnel complete the state-approved training in the use of a bleeding control station: each school district peace officer commissioned under TEC, §37.081; each school security personnel employed under TEC, §37.081, who provides security services at a campus; each school resource officer who provides law enforcement at a campus; and all other district or school personnel who may reasonably be expected to use a bleeding control station.

The traumatic injury response protocol must also require each school district and open-enrollment charter school to annually offer instruction on the use of a bleeding control station to students enrolled at the campus in Grade 7 or higher. The instruction must be provided by a school resource officer or other appropriate district or school personnel who has received the state-approved training.

Program Requirements. Any entity that elects to have a training program on the use of a bleeding control station reviewed is invited to send a complete description of the program to TEA for consideration. Eligible programs must be developed or endorsed by either the American College of Surgeons, or a similar organization, or an emergency medicine department of a health-related institution of higher education or a hospital.

Training programs submitted to TEA for review must be in a face-to-face format and may not be provided as an online course. The course of instruction must use nationally recognized, evidence-based guidelines for bleeding control and must incorporate instruction on the psychomotor skills necessary to use a bleeding control station in the event of an injury to another person, including instruction on proper chest seal placement.

In accordance with TEC, §38.030(h), the course of instruction may be designed to be provided by emergency medical technicians, paramedics, law enforcement officers, firefighters, representatives of the organization or institution that developed or endorsed the training, educators, other public school employees, or other similarly qualified individuals. The course of instruction is not required to provide for certification in bleeding control. If the course of instruction does provide for certification in bleeding control, the instructor must be authorized to provide the instruction for the purpose of certification by the organization or institution that developed or endorsed the course of instruction.

Selection Criteria. Selection of qualified traumatic injury response programs will follow a two-step process. A submitted program will first be screened to determine whether the program was developed or endorsed by (1) the American College of Surgeons or a similar organization or (2) the emergency medicine department of a health-related institution of higher education or a hospital. A successfully screened program will then be evaluated for final approval using a rating scale based on the following criteria.

- (1) The program must be provided as a face-to-face training.
- (2) The program must use nationally recognized, evidence-based guidelines for bleeding control.

- (3) The program must incorporate instruction on the psychomotor skills necessary to use a bleeding control station in the event of an injury to another person.

- (4) The program must include instruction on proper chest seal placement.

- (5) The program must include how to respond to a deadly injury.

- (6) The program must include instruction on the challenges of uncontrollable bleeding and the basic principles of how to stop severe bleeding, such as how to compress, control, and pack a severe bleed; how to recognize and care for someone in shock; how to use hemostatic dressing; and how to apply a tourniquet.

Further Information. For clarifying information, contact Barney Fudge, Health and Physical Education Coordinator, Curriculum Standards and Student Support Division, Texas Education Agency, by phone at (512) 463-9581 or by email at HealthandSafety@tea.texas.gov.

Deadline for Receipt of Materials. Materials must be submitted to the Texas Education Agency, Curriculum Standards and Student Support Division, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), Friday, September 27, 2019, to be considered on the list of Approved Training Programs on the Use of a Bleeding Control Station. Materials will be reviewed as they are submitted, and TEA will post approved programs to the list of Approved Training Programs on the Use of a Bleeding Control Station. No materials will be returned to submitting entities. Materials will be kept as a reference for staff at the Texas Education Agency.

Issued in Austin, Texas, on August 28, 2019.

TRD-201902932

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: August 28, 2019

◆ ◆ ◆ Employees Retirement System of Texas

ERS Contract Award Announcement

This contract award announcement is being submitted by the Employees Retirement System of Texas (ERS) in relation to a contract award to provide hedge fund consulting services. The contractor's services will include assisting ERS on maintaining and monitoring a hedge fund investment strategy including development of a long-term hedge fund plan, portfolio planning and construction, market and investment analysis, portfolio monitoring and management, and training (Required Services).

The selected contractor is Albourne America LLC., 655 Montgomery Street, Suite 1910, San Francisco, California 94111. The value of the contract is estimated to be \$2,940,000.00. The contract was awarded on August 26, 2019, and will be for a term beginning on September 2, 2019, and extending through September 1, 2025, subject to the terms of the contract.

Deliverables will be based on the Required Services and determined by ERS on an annual basis.

TRD-201902930

Gabrielle Schreiber

Director of Procurement and Contract Oversight

Employees Retirement System of Texas

Filed: August 28, 2019

◆ ◆ ◆

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 7, 2019**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **October 7, 2019**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Alford Rentals, LLC; DOCKET NUMBER: 2019-0713-PWS-E; IDENTIFIER: RN106425580; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §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; and 30 TAC §290.43(d)(9), by failing to obtain approval of the ED prior to the installation of more than three pressure tanks at one site; PENALTY: \$100; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Blanchard Refining Company LLC; DOCKET NUMBER: 2019-0232-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(1) - (3), 115.352(4), 115.783(5), 116.115(c), 116.715(a), and 122.143(4), 40 Code of Federal Regulations (CFR) §§60.482-6(a)(1), 60.482-6a(a)(1), 61.242-6(a)(1), and 63.167(a)(1), New Source Review (NSR) Permit Number 2231, Special Conditions (SC) Number 4.E, NSR Permit Number 2315, SC Number 10.E, NSR Permit Number 2609, SC Number 4.E, NSR Permit Number 2612, SC Number 4.E, NSR Permit Number 6488, SC Number 9.E, NSR Permit Number 9606, SC Number 11.E, NSR Permit Numbers 19599 and PSDTX023, SC Number 9.E, Flexible Permit Numbers 47256 and PSDTX402M3,

SC Number 51.E, Federal Operating Permit (FOP) Number O1541, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A and 23, and Texas Health and Safety Code (THSC), §382.085(b), by failing to equip each open-ended valve or line with a cap, blind flange, plug, or a second valve; 30 TAC §106.6(b) and §122.143(4), Permit by Rule Registration Number 107970, FOP Number O1541, GTC and STC Number 24, and THSC, §382.085(b), by failing to comply with all representations with regard to construction plans, operating procedures, and maximum emissions rates in any certified registration; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 2315, SC Number 1, FOP Number O1541, GTC and STC Number 23, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates (MAERs) for Heater B-201, Emissions Point Number (EPN) 72; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 2612, SC Number 1, FOP Number O1541, GTC and STC Number 23, and THSC, §382.085(b), by failing to comply with the MAERs for the Reactor Charge Heater B601 Heater, EPN 601; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 6488, SC Number 1, FOP Number O1541, GTC and STC Number 23, and THSC, §382.085(b), by failing to comply with the MAER for Heaters B-402A, B, and C, EPN 213; 30 TAC §117.310(c)(1)(A) and §122.143(4), FOP Number O1541, GTC and STC Number 1.A, and THSC, §382.085(b), by failing to comply with the concentration limit for Heater B401A, EPN 211; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1541, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$125,563; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$62,781; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: City of Edinburg; DOCKET NUMBER: 2019-0840-MSW-E; IDENTIFIER: RN102080603; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: wastewater treatment plant with an unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; and 30 TAC §330.673(a) and TWC, §5.702, by failing to pay outstanding solid waste disposal fees, including any associated late fees, for TCEQ Financial Account Number 0708321; PENALTY: \$2,963; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: City of Milford; DOCKET NUMBER: 2019-0718-PWS-E; IDENTIFIER: RN101384287; LOCATION: Milford, Ellis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(e)(3)(G), by failing to obtain an exception, in accordance with 30 TAC §290.39(l), prior to using blended water containing free chlorine and water containing chloramines; and 30 TAC §290.46(z), by failing to create a nitrification action plan for all systems distributing chloraminated water; PENALTY: \$100; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Harris-Fort Bend Counties Municipal Utility District Number 3; DOCKET NUMBER: 2019-0422-PWS-E; IDENTIFIER: RN104910245; LOCATION: Katy, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and Texas Health and Safety Code, §341.0315(c), by failing to provide an elevated storage tank capacity

of 100 gallons per connection for a system with more than 2,500 connections; PENALTY: \$900; ENFORCEMENT COORDINATOR: Julianne Dewar, (512) 239-1001; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: J. L. Refrigeration, LLC; DOCKET NUMBER: 2019-0204-PWS-E; IDENTIFIER: RN101270007; LOCATION: Crystal City, Dimmit County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; PENALTY: \$113; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(7) COMPANY: Jeffery S. Morris dba Jeff's Tree Service; DOCKET NUMBER: 2019-0612-MLM-E; IDENTIFIER: RN110746245; LOCATION: Jonestown, Travis County; TYPE OF FACILITY: unauthorized recycling facility; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the state of Texas; and 30 TAC §328.5(b), by failing to submit a Notice of Intent prior to the commencement of recycling activities; PENALTY: \$3,852; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(8) COMPANY: KWIK CHEK FOOD STORES, INCORPORATED dba Kwik Chek 37; DOCKET NUMBER: 2019-0631-PST-E; IDENTIFIER: RN101562874; LOCATION: Wolfe City, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report a suspected release to the agency within 24 and 72 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$48,878; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Midland Odessa Urban Transit District; DOCKET NUMBER: 2019-0663-PST-E; IDENTIFIER: RN106601768; LOCATION: Midland, Midland County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(B) and (2)(A)(i)(III) and (iii) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) and piping which were installed after January 1, 2009, for releases at a frequency of at least once every 30 days using interstitial monitoring, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(10) COMPANY: Midway Range, LLC; DOCKET NUMBER: 2019-0403-PWS-E; IDENTIFIER: RN101247229; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends at least three feet from the well casing in all directions, is at least six inches thick, and is sloped to drain away from the easement at not less than 0.25 inches per foot; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated, and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(c)(1), by failing to

provide the two ground storage tanks (GSTs) with a gooseneck or roof ventilator designed by an engineer and installed in strict accordance with American Water Works Association standards and equipped with a corrosion-resistant 16-mesh or finer screen; 30 TAC §290.43(c)(3), by failing to provide an overflow discharge opening on the two GSTs with a gravity-hinged and weighted cover that closes automatically and fits tightly with no gap over 1/16 inch, an elastomeric duckbill valve, or other approved device to prevent the entrance of insects and other nuisances; 30 TAC §290.43(c)(4), by failing to provide the two GSTs with a liquid level indicator located at the tank site which is calibrated in feet of water; 30 TAC §290.45(c)(1)(B)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more service pumps having a total capacity of 1.0 gallon per minute per unit; 30 TAC §290.45(c)(1)(B)(iv) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of ten gallons per unit; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (ii)(III), (B)(iv), and (D)(ii), by failing to maintain water works operations and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can easily be located during emergencies; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.110(d)(1), by failing to measure the free chlorine residual to a minimum accuracy of plus or minus 0.1 milligrams per liter using methods that conform to the requirements of 30 TAC §290.119; and 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with monitoring requirements; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Orion Engineered Carbons LLC; DOCKET NUMBER: 2019-0765-AIR-E; IDENTIFIER: RN100209659; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: carbon black production plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit (FOP) Number O1661, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.146(1) and (2), FOP Number O1661, GTC and Special Terms and Conditions Number 12, and THSC, §382.085(b), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance, and failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$3,263; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(12) COMPANY: Rohm and Haas Texas Incorporated; DOCKET NUMBER: 2018-1364-AIR-E; IDENTIFIER: RN100223205; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review (NSR) Permit Numbers 723 and PSDTX828M1 (effective July 29, 2015 and June 23, 2017), Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O2233, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 14, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate (MAER); 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), NSR Permit Numbers 751 and PSDTX987, SC Number 1, FOP Number O1583, GTC and

STC Number 14, and THSC, §382.085(b), by failing to comply with the MAER; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 751 and PSDTX987, SC Number 17, FOP Number O1583, GTC and STC Number 14, and THSC, §382.085(b), by failing to maintain records of the instrument type used to determine sulfur dioxide concentration during maintenance, startup, and shutdown activities; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 751 and PSDTX987 (effective October 28, 2014), SC Number 20, NSR Permit Numbers 751 and PSDTX987 (effective April 19, 2017), SC Number 22, FOP Number O1583, GTC and STC Number 14, and THSC, §382.085(b), by failing to revalidate the estimated emissions from instrument maintenance annually; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Number 1257A, General Conditions Number 8 and SC Number 1, FOP Number O1583, GTC and STC Number 14, and THSC, §382.085(b), by failing to comply with the MAERs; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Numbers 8838 and N61, General Conditions (GC) Number 8 and SC Number 1, FOP Number O2236, GTC and STC Number 16, and THSC, §382.085(b), by failing to comply with the MAER; 30 TAC §116.115(c) and §122.143(4), NSR Permit Numbers 8838 and N61, SC Number 12.B(2)(b), FOP Number O2236, GTC and STC Number 16, and THSC, §382.085(b), by failing to conduct quarterly quality assurance for a continuous emission monitoring system; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1583, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O2233, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$39,767; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$15,907; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4006; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Siddhibinayak Enterprises Inc dba Taylor Food Mart; DOCKET NUMBER: 2019-0447-PWS-E; IDENTIFIER: RN101549186; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of nitrate sampling to the executive director (ED) within the first ten days following the month in which the results are received by the public water system, or the first ten days following the end of the monitoring period, whichever occurs first, for the January 1, 2017 - December 31, 2017, monitoring period; 30 TAC §290.109(d)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive sample on October 18, 2018, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time the distribution coliform-positive sample was collected; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue a public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to report the results of nitrate sampling to the ED for the January 1, 2016 - December 31, 2016, monitoring period; PENALTY: \$355; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Sunwest Grocery, LLC; DOCKET NUMBER: 2019-0722-PST-E; IDENTIFIER: RN101556256; LOCATION: Alvarado, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release of a regulated substance within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$10,526; ENFORCEMENT COORDINATOR: Berenice

Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: The Chemours Company FC, LLC; DOCKET NUMBER: 2019-0340-IWD-E; IDENTIFIER: RN101623254; LOCATION: Gregory, San Patricio County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001651000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, Outfall Numbers 001 and 002, by failing to comply with permitted effluent limitations; PENALTY: \$30,187; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$12,075; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(16) COMPANY: Thomas Steel Drums, Incorporated; DOCKET NUMBER: 2019-0780-AIR-E; IDENTIFIER: RN100688738; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: barrel and drum manufacturing facility; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), New Source Review Permit Number 49060, General Conditions Number 8 and Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: \$9,500; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Western Springs Apartments, LP; DOCKET NUMBER: 2019-0799-EAQ-E; IDENTIFIER: RN110527462; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: multi-family residential development; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Contributing Zone; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-201902910
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 27, 2019



Amended Notice of Hearing (To change hearing date.)
TEXAS LNG BROWNSVILLE LLC: SOAH Docket No.
582-19-6261; TCEQ Docket No. 2019-0624-AIR; Proposed
Permit No. 139561 Application

TEXAS LNG BROWNSVILLE LLC, 2800 North Loop West Suite 910, Houston, Texas 77092-8838, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 139561, which would authorize construction of a LNG export terminal located east from Brownsville on State Highway 48. The applicant provided the following directions to the site: From the intersection of State Highway 48 and State Highway 550 continue on State Highway 48 for 12.2 miles, the gate to the location is on the right, Brownsville, Cameron County, Texas 78521. This application was submitted to the TCEQ on March 24, 2016. The proposed facility will emit the following contaminants: nitrogen oxides, carbon monoxide, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, sulfur dioxide, and hazardous air pollutants,

including, but not limited to hydrogen sulfide. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <www.tceq.texas.gov/assets/public/hb610/index.html?lat=26.040833&lng=-97.2325&zoom=13&type=r>. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision to issue the permit because it meets all rules and regulations. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the TCEQ central office, the TCEQ Harlingen regional office, and at the Port Isabel Public Library, 213 Yturria Street, Port Isabel, Cameron County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - September 26, 2019

**835 East Levee Street, 2nd Floor
Brownsville, Texas 78520**

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on June 18, 2019. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 Texas Administrative Code (TAC) Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

MAILING LIST.

You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION.

Public comments and requests must be submitted either electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at www.tceq.texas.gov.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at www.tceq.texas.gov.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Further information may also be obtained from TEXAS LNG BROWNSVILLE LLC at the address stated above or by calling Mr. David Glessner, General Manager Permitting at (713) 820-9607.

Issued: August 23, 2019

TRD-201902922

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 27, 2019



Enforcement Orders

An agreed order was adopted regarding RBTQ, INC., Docket No. 2017-0596-PWS-E on August 27, 2019, assessing \$839 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Garisham Inc dba Family Mart, Docket No. 2018-0450-PST-E on August 27, 2019, assessing \$5,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Land Investment Ideas, LLC and Texas Cornermart LLC dba Five Points, Docket No. 2018-0536-PST-E on August 27, 2019, assessing \$3,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fuel Town, Inc dba Chevron Fuel Town, Docket No. 2018-1390-PST-E on August 27, 2019, assessing \$3,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wasfia Enterprise LLC dba Cypress Plaza 2, Docket No. 2018-1707-PST-E on August 27, 2019, assessing \$3,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Taylor Pearson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201902921



Enforcement Orders

An agreed order was adopted regarding Dario Jaime Gonzalez dba Darios Tire Shop, Docket No. 2017-0137-MSW-E on August 28, 2019, assessing \$10,125 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 Donald R. Cole dba Harmony Water System, Docket No. 2017-1058-PWS-E on August 28, 2019, assessing \$2,650 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.

A default order was adopted regarding 82L, LLC dba Tega Kid's Superplex, Docket No. 2017-1637-PWS-E on August 28, 2019, assessing \$10,912 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Corpus Christi, Docket No. 2018-0201-MWD-E on August 28, 2019, assessing \$19,689 in administrative penalties with \$3,937 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, 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 GALLOP PETROLEUM LLC, Docket No. 2018-0325-PST-E on August 28, 2019, assessing \$7,624 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Harkrider, 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 Exxon Mobil Corporation, Docket No. 2018-0505-AIR-E on August 28, 2019, assessing \$13,330 in administrative penalties with \$2,666 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 Gavilon Fertilizer, LLC, Docket No. 2018-0571-IHW-E on August 28, 2019, assessing \$94,780 in administrative penalties. 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 Nueces County Water Control and Improvement District 3, Docket No. 2018-0618-PWS-E on August 28, 2019, assessing \$1,380 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Theophilus Goins, Docket No. 2018-0726-PST-E on August 28, 2019, assessing \$5,512 in administra-

tive penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Rockdale, Docket No. 2018-0805-MWD-E on August 28, 2019, assessing \$95,550 in administrative penalties with \$19,110 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 THE CONSOLIDATED WATER SUPPLY CORPORATION, Docket No. 2018-0855-PWS-E on August 28, 2019, assessing \$4,491 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Javier Maldonado dba Auto Correct Paint and Body Shop, Docket No. 2018-0883-AIR-E on August 28, 2019, assessing \$1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Stockdale, Docket No. 2018-0956-MWD-E on August 28, 2019, assessing \$8,750 in administrative penalties with \$1,750 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 the City of Coleman, Docket No. 2018-1049-PWS-E on August 28, 2019, assessing \$426 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting James Knittel, 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 Permian Frac Sand, LLC, Docket No. 2018-1162-PWS-E on August 28, 2019, assessing \$1,684 in administrative penalties with \$399 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Blair Water Supply Corporation, Docket No. 2018-1482-PWS-E on August 28, 2019, assessing \$405 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.

TRD-201902937
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 28, 2019



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 7, 2019**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 7, 2019**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Dale W. Haggard dba Whispering Pines Subdivision; DOCKET NUMBER: 2018-1628-PWS-E; TCEQ ID NUMBER: RN101228161; LOCATION: five miles east of Atlanta on County Road 4793, south of Farm-to-Market Road 249, near Atlanta, Cass County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter free chlorine throughout the distribution system at all times; PENALTY: \$170; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Robert Thomas Azzarello, Trustee of Robert Thomas Azzarello Trust, dba Pearland Acres Mobile Home Park; DOCKET NUMBER: 2018-0877-PWS-E; TCEQ ID NUMBER: RN101188753; LOCATION: intersection of County Road 128 and County Road 143 off Highway 35 South, Brazoria, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §§290.46(f)(4), 290.106(e), and 290.122(c)(2)(A) and (f), by failing to provide the results for minerals sampling for the January 1, 2014 - December 31, 2016 monitoring period to the executive director (ED) and failing to provide public notification and submit a copy of the public notification regarding the failure to provide the results of minerals sampling for the January 1, 2014 - December 31, 2016 monitoring period; 30 TAC §§290.46(f)(4), 290.106(e), and 290.122(c)(2)(A) and (f), by failing to provide the results for nitrate sampling for the January 1, 2015 - December 31, 2015 monitoring period, nitrate sampling for the January 1, 2016 - December 31, 2016 monitoring period and nitrate/nitrite sampling for the January 1, 2017 - December 31, 2017 monitoring period to the ED and failing to provide public notification and submit a copy of the public notification regarding the failure to provide the results of nitrate sampling for the January 1, 2016 -

December 31, 2016 monitoring period; 30 TAC §290.46(f)(4) and §290.107(e), by failing to provide the results for synthetic organic chemical (SOC) contaminants (Group SOC 5) sampling to the ED for the January 1, 2011 - December 31, 2016 monitoring period; 30 TAC §§290.46(f)(4), 290.107(e), and 290.122(c)(2)(A) and (f), by failing to provide the results for volatile organic chemical (VOC) contaminants sampling to the ED for the January 1, 2010 - December 31, 2015, the January 1, 2016 - December 31, 2016, and the January 1, 2017 - December 31, 2017 monitoring periods and failing to provide public notification and submit a copy of the public notification regarding the failure to provide the results of VOC contaminants sampling for the January 1, 2016 - December 31, 2016 monitoring period; 30 TAC §§290.46(f)(4), 290.115(e), and 290.122(c)(2)(A) and (f), by failing to provide the results for Stage 2 Disinfection Byproducts (DBP2) sampling to the ED for the January 1, 2015 - December 31, 2015, the January 1, 2016 - December 31, 2016, and the January 1, 2017 - December 31, 2017 monitoring period and failing to provide public notification and submit a copy of the public notification regarding the failure to provide the results of the DBP2 sampling for the January 1, 2015 - December 31, 2015, and the January 1, 2016 - December 31, 2016 monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to provide the results of metals and SOC contaminants (Methods 504, 515, and 531) sampling for the January 1, 2013 - December 31, 2015 monitoring period and regarding the failure to provide the results of nitrate/nitrite sampling for the January 1, 2015 - December 31, 2015 monitoring period; PENALTY: \$1,094; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Tyler Petroleum Inc dba Race Runner 6; DOCKET NUMBER: 2018-0181-PST-E; TCEQ ID NUMBER: RN101829794; LOCATION: 2216 east 5th Street, Tyler, Smith County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: \$4,875; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201902901

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 26, 2019



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity

to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 7, 2019**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 7, 2019**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Bernardo Espinoza dba J.B. Stone Quarry 2; DOCKET NUMBER: 2018-1394-EAQ-E; TCEQ ID NUMBER: RN108876640; LOCATION: 500 Private Road 909, Georgetown, Williamson County; TYPE OF FACILITY: dimensional limestone quarry; RULES VIOLATED: 30 TAC §213.4(k) and Water Pollution Abatement Plan (WPAP) Number 11-14022704, Rock Quarry Operation Pollution Abatement Measures, by failing to comply with an approved WPAP; PENALTY: \$9,750; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(2) COMPANY: JP80 RV, LLC; DOCKET NUMBER: 2018-1066-PWS-E; TCEQ ID NUMBER: RN110439510; LOCATION: 13923 Highway 80 near Leesville, Gonzales County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(q)(1), by failing to provide a copy of the boil water notice (BWN) to the executive director (ED) within 24 hours after issuance by the facility and a signed Certificate of Delivery to the ED within 10 days after issuance of the BWN; Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.46(d)(2)(a) and §290.110(b)(4), by failing to operate the disinfection equipment to maintain a minimum chlorine residual of 0.2 milligrams per liter; and THSC, §341.035(a) and 30 TAC §290.39(h)(1), by failing to submit plans and specifications to the ED for review and approval prior to the construction of a new public water supply; PENALTY: \$350; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100

TRD-201902902
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 26, 2019



Notice of Opportunity to Comment on Shutdown/Default
Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 7, 2019**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 7, 2019**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorney is available to discuss the S/DO and/or the comment procedure at the listed phone number; however, comments on the S/DO shall be submitted to the commission in **writing**.

(1) COMPANY: SK Alliance Inc dba On the Road 103; DOCKET NUMBER: 2018-0991-PST-E; TCEQ ID NUMBER: RN103730917; LOCATION: 4110 South 1st Street, Lufkin, Angelina County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements were met; and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$9,424; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201902900
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 26, 2019



Notice of Public Hearing and Comment Period on Proposed Draft Municipal Solid Waste Landfill General Operating Permit

The Texas Commission on Environmental Quality (TCEQ or commission) is providing an opportunity for public comment and a notice and comment hearing (hearing) on the draft Municipal Solid Waste Landfill General Operating Permit (GOP) Number 517. The draft GOP contains revisions based on recent federal and state rule changes, which include updates to the requirements tables; the addition of new requirements tables; and updates to the terms. This renewal also corrects typographical errors and updates language for administrative preferences.

The draft GOP is subject to a 30-day comment period. During the comment period, any person may submit written comments on the draft GOP. The commission will hold a public hearing in Austin on October 7, 2019, at 2:00 p.m. in Building E, Room 201S, TCEQ offices, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the draft GOP 30 minutes prior to the hearing and will also be available to answer questions after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Non-Rule Project Number 2019-099-OTH-NR. Written comments may be submitted to Ms. Sherry Davis, Texas Commission on Environmental Quality, Office of Air, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087. The comment period closes October 7, 2019. Copies of the draft GOP may be obtained from the commission website at https://www.tceq.texas.gov/permitting/air/nav/titlev_news.html. For further information, please contact Ms. Davis, at (512) 239-2141. *Si desea información en español, puede llamar al (800) 687-4040.*

TRD-201902911
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 27, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Bucksaver, LLC: SOAH Docket No. 582-19-6759; TCEQ Docket No. 2018-1241-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - September 26, 2019
William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed March 5, 2019, concern-

ing assessing administrative penalties against and requiring certain actions of BuckSaver, LLC, for violations in Jefferson County, Texas, of: Tex. Water Code §26.3475(c)(1) and 30 Texas Administrative Code §§334.50(b)(1)(A), 334.72, and 334.74.

The hearing will allow BuckSaver, LLC, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford BuckSaver, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of BuckSaver, LLC to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** BuckSaver, LLC, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26, and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting John S. Mercurief II, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: August 27, 2019
TRD-201902923

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 27, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of John S. Jones dba John's Tire & Wheels and dba John's Tire Shop: SOAH Docket No. 582-19-6826; TCEQ Docket No. 2018-0057-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - September 26, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed April 8, 2019, concerning assessing administrative penalties against and requiring certain actions of John S. Jones dba John's Tire & Wheels and dba John's Tire Shop, for violations in Tom Green County, Texas, of: Texas Health & Safety Code §361.112(a) and 30 Texas Administrative Code §§328.56(d)(4) and (e), 328.58(a), (c), and (f), 328.60(a), 328.63(d)(3) and (d)(6).

The hearing will allow John S. Jones dba John's Tire & Wheels and dba John's Tire Shop, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford John S. Jones dba John's Tire & Wheels and dba John's Tire Shop, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of John S. Jones dba John's Tire & Wheels and dba John's Tire Shop to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** John S. Jones dba John's Tire & Wheels and dba John's Tire Shop, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and ch. 7, Texas Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 328; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Tracy Chandler, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by con-

tacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: August 27, 2019

TRD-201902924

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 27, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of RZ Traders Inc dba Pride Food Store: SOAH Docket No. 582-19-6760; TCEQ Docket No. 2018-1311-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - September 26, 2019

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 18, 2019, concerning assessing administrative penalties against and requiring certain actions of RZ Traders Inc dba Pride Food Store, for violations in Collin County, Texas, of: Tex. Water Code §26.3475(c) and (d), and 30 Texas Administrative Code §§334.49(a)(4) and 334.50(b)(1)(A).

The hearing will allow RZ Traders Inc dba Pride Food Store, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford RZ Traders Inc dba Pride Food Store, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of RZ

Traders Inc dba Pride Food Store to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. RZ Traders Inc dba Pride Food Store, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26, and 30 Texas Administrative Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting John S. Mercurief II, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at www.tceq.texas.gov/goto/efilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: August 27, 2019

TRD-201902925

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 27, 2019



General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the fol-

lowing project(s) during the period of August 12, 2019, to August 23, 2019. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office website. The notice was published on the website on Friday, August 30, 2019. The public comment period for this project will close at 5:00 p.m. on Sunday, September 29, 2019.

FEDERAL AGENCY ACTIONS:

Applicant: Harris County Flood Control District (HCFCD)

Location: The proposed Region General Permit (RGP) would be valid in waters of the U.S. utilized as stormwater management facilities under the authority of the HCFCD, in Harris County, Texas.

Latitude & Longitude (NAD 83): N/A

Project Description: To reissue an RGP authorizing the discharge of dredge or fill material associated with performing routine maintenance and emergency repairs to existing stormwater management facilities, under the jurisdiction of the HCFCD. Maintenance includes repair, rehabilitation, and replacement of structural and earthen features, removal of sediment and debris to restore previously authorized cross-sectional configurations, erosion protection, or emergency repairs required as a result of discrete natural events. Temporary construction, access, and dewatering is authorized provided that the associated primary maintenance activity is authorized under the RGP. Only the minimum volume of fill material, needed to accomplish the purpose of each project, would be used.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2009-00123. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 19-1349-F1

Applicant: Florida Gas Transmission, LLC

Location: The project site is located in Galveston Bay, at the area between San Leon and Smith Point, in Galveston County, Texas.

Latitude & Longitude (NAD 83): 29.47210, -94.90004

Project Description: The applicant proposes to lay 8-foot by 20-foot by 4.5-inch articulating revetment mattresses (ACMs), totaling 4.2 acres of fill, over a 24-inch-diameter pipeline crossing Galveston Bay that has shallow cover (less than 36 inches). A barge with crane, materials and material barges, work boats, and project essential personnel and divers will be mobilized to the project site for ACM placement. The crane will lower the mats to the bed of the bay where divers will work to position and place the ACMs atop the areas with shallow cover. The ACMs will overlap one another by 2 feet and be connected to each other with stainless steel worm drive connectors.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00406. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1400-F1

Applicant: Galveston County

Location: The project site is located in the Gulf Intracoastal Waterway, at Yacht Basin Road, in Gilchrist, Galveston County, Texas.

Latitude & Longitude (NAD 83): 29.514948, -94.512272

Project Description: The applicant proposes to impact 0.26 acres of waters of the United States to facilitate the construction of a bulkhead, placement of rip rap around an existing jetty and shoreline and remove and replace an existing boat ramp and wood dock in the Gulf Intra-coastal Waterway. The amount of fill material that is proposed to be discharge for the requested boat dock and ramp facility improvements: 696 cubic yards of rip rap around the existing jetty and shoreline; 18 cubic yards of material for the construction of the bulkhead; 0.16 cubic yards for the installation of two wood docks; 3 cubic yards of material for the removal of an existing dock; 53 cubic yards of concrete for the construction of a boat ramp.

The purpose of the proposed project is to repair and renovate an existing dock and boat ramp facility that has been damaged from past weather events. The applicant's plans are enclosed in 9 sheets.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2001-01549. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 19-1401-F1

Applicant: Marathon Petroleum

Location: The project site is located in the Texas City Ship Canal in West Bay, at 2401 5th Avenue South, in Texas City, Galveston County, Texas.

Latitude & Longitude (NAD 83): 29.368, -94.8927

Project Description: The applicant proposes to discharge 13,000 cubic yards into 0.95 acres of West Bay to facilitate the construction of a 1,500-foot steel sheet pile bulkhead with backfill, 95 linear feet of sheet pile wall, 2 piles and a new emergency boat dock area. The area between the existing shoreline and the proposed bulkhead will be filled throughout with 0.95 acres of fill. The proposed project activity consists of the installation of the 1,500 feet of new steel sheet pile bulkhead, north and south of dock 32/34, with another 165 feet near the proposed emergency boat dock area. The applicant also proposes to remove an existing 1,260-square-foot wooden boat house and replace it with the proposed emergency boat dock area.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00302. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 19-1412-F1

Applicant: City of Corpus Christi

Location: Open water of Packery Channel beginning at the rip rap found on the approach immediately southeast of the State Highway 361 bridge, and extending to the west corner of the bulkhead surrounding the boat ramp parking lot.

Latitude & Longitude (NAD 83): 27.618780, -97.213392

Project Description: The applicant proposes to construct a segmented rock breakwater within Packery Channel that extends from the northwest corner of the Packery Channel boat ramp parking lot to the State Highway 361 Bridge. The proposed segmented rock breakwater will measure approximately 315 feet long and will include one to three gaps, each measuring approximately 20 feet wide. The top of the breakwater (crest) will have a total width of approximately 6 feet at a slope of 3:1 and will be located at approximately +3 feet NAVD88. The breakwater will include 7-foot-wide toe aprons on either side with a slope of 3:1 from the toe to the existing grade, with a total breakwater base

width of approximately 50 feet. Construction of the rock breakwater will require the placement of approximately 2,000 cubic yards (CY) of rock material and the mechanical excavation of approximately 1,000 CY of bottom sediments. Excavated material will be temporarily side-cast between the breakwater and the eastern shoreline. Excavated material will then be backfilled over the toe aprons where it will settle into gaps and spaces between the placed rocks. Any surplus material will be placed between the breakwater and eastern shoreline within the area that was significantly scoured by Hurricane Harvey.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00479. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

CMP Project No: 19-1419-F1

Applicant: Port of Corpus Christi Authority (PCCA)

Location: The proposed Channel Deepening Project (CDP) is located within the existing channel bottom of the Corpus Christi Ship Channel (CCSC) starting at station 110+00 near the southeast side of Harbor Island, traversing easterly through the Aransas Pass, and extending beyond the currently authorized terminus Station -330+00 an additional 29,000 feet terminating out into the Gulf of Mexico at the proposed new Terminus Station -620+00, an approximate distance of 13.8 miles.

Latitude & Longitude (NAD 83): 28.824019, -97.054338

Project Description: The applicant is proposing to deepen a portion of the CCSC to depths that vary from -75 to -77 feet mean lower low water (MLLW), plus 2 feet allowable over dredge, plus 2 feet advanced maintenance dredging, which ultimately totals -79 to -81 feet MLLW. The proposed CDP of the CCSC is approximately 1,778 acres and will create approximately 46 million cubic yards (MCY) of new work dredged material (17.1 MCY of clay and 29.2 MCY of sand). The proposed CDP is needed to accommodate transit of fully laden very large crude carriers (VLCCs) that draft approximately 70 feet. The proposed project does not include widening the channel; however, some minor incidental widening of the channel slopes is expected to meet side slope requirements and to maintain the stability of the channel. The applicant is proposing to dispose of the material in several ways. Approximately 13.8 MCY of the clay portion of the new work dredged material located in the offshore reaches between Stations -620+00 to -72+50 would be placed at CCSC Improvement Project (CCSCIP) New Work (NW) Ocean Dredged Material Disposal Site (ODMDS). The clay portion of new work dredged material from Stations -72+50 to Station 110+00 would be used beneficially where possible to create perimeter dikes.

Regulated Activities for the proposed CDP consists of:

1. Activities subject to Section 10 of the RHA:

--Deepening a portion of the CCSC between Station 110+00 to the proposed extension Station -620+00 by conducting "new work" dredging activities in navigable waters of the U.S.:

--Stations 110+00 to -72+00: -79 feet MLLW (-75 feet MLLW plus two feet of advanced maintenance and two feet of allowable overdredge).

--Stations -72+00 to -330+00: -81 feet MLLW (-77 feet MLLW plus two feet of advanced maintenance and two feet of allowable overdredge).

--Stations -330+00 to Station -620+00: This section represents the expansion of the CCSC an additional 29,000 feet from Station -330+00. This proposed expansion would be dredged to -81 MLLW (-77 feet MLLW plus two feet of advanced maintenance and two feet of allow-

able overdredge) to reach the -80-foot MLLW bathymetric contour in the Gulf of Mexico.

--The existing Inner Basin at Harbor Island will be expanded as necessary to allow VLCC turning. This modification will also include a flare transition from the CCSC within Aransas Pass to meet the turning basin expansion.

2. Activities subject to Section 404 of the CWA:

--The proposed placement of new work dredged material into waters of the U.S. for Beneficial Use (BU) sites located in and around Corpus Christi and Redfish Bays which also includes the Redfish Bay State Scientific Research Area.

--The dredged material may also be used for dune restoration on San Jose Island (SJI). Proposed feeder berms (B1 - B9) for beach restoration along SJI and Mustang Island are proposed.

3. Activities subject to Section 103 of the MPRSA:

a. Transportation of new work dredged material to the CCSCIP NW ODMDS.

The proposed total estimated adverse impact to special aquatic sites, specifically wetlands, resulting from the placement of dredged material totals 185.9 acres. The proposed adverse impacts to submerged aquatic vegetation total 58.5 acres. As of the date of this Public Notice, the Corps has not received special aquatic site delineations for wetlands or surveys for submerged aquatic vegetation.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2019-00067. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA), and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1420-F1

Applicant: Axis Midstream Holdings, LLC

Location: The proposed project is located in several towns, waterways, and counties including Taft, Gregory, Ingleside, and Aransas Pass, in San Patricio County, Texas; the Gulf Intracoastal Waterway (GIWW); Redfish Bay; the Corpus Christi Ship Channel (CCSC); and terminates on Harbor Island in Port Aransas, Nueces County, Texas.

Project Description: The applicant proposes to construct a series of facilities and pipelines to store, transport, and load crude oil into marine transport vessels. The proposed project components are composed of:

a) The Midway Tank Farm (Midway Facility) located south of the City of Taft, Texas.

b) The Aransas Pass Staging Facility (Aransas Facility) located west of the City of Aransas Pass.

c) A pipeline bundle that would connect the Aransas and Midway Facilities. This pipeline bundle would consist of

--one (1) 2-inch fiber optic;

--one (1) 6-inch gas supply (last mile); and

--two (2) 36-inch crude oil pipelines.

d) Harbor Island Loading Terminal (Harbor Island Terminal) located on the west side of the CCSC on Harbor Island in Port Aransas, Texas.

e) A pipeline bundle that would connect the Aransas and Harbor Island Facilities. This pipeline bundle would consist of:

--one (1) 2-inch fiber optic;

--one (1) 6-inch gas supply;

--one (1) 16-inch intermix return; and

--two (2) 42-inch crude oil pipelines.

The installation of the proposed Midway to Aransas pipeline bundle would result in 13.94 acres of temporary trench and fill impacts in waters of the United States, including wetlands.

The construction of the proposed Aransas Facility would total 16.8 acres of permanent fill impacts to waters of the U.S., specifically estuarine wetlands mainly comprised of *Distichlis spicata* (saltgrass) and fringed with *Borrhichia frutescens* (sea oxeeye daisy).

The installation of the proposed Aransas to Harbor Island pipeline bundle would result in 18.58 acres of temporary trench and fill impacts to waters of the U.S.; specifically, 7.81 acres to submerged aquatic vegetation (SAV) mainly comprised of *Halodule wrightii* (shoal grass), 0.002 acres to small stands of *Spartina alterniflora* (smooth cordgrass), 10.65 acres are to unvegetated tidal sand flats, 0.41 acres are to black mangrove (*Avicennia germinans*), and 0.11 acres to estuarine wetlands mainly consisting of salt grass and sea oxeeye daisy.

No impacts to waters of the United States would result in the construction of the Midway Facility and the upland portion of the Harbor Island Facility. The construction of the vessel berth would result in 70 acres of new work material being dredged and placed onsite for shoreline restoration, beneficial use, and/or in one of the identified and listed placement areas

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2018-00789. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Railroad Commission as part of its certification under §401 of the Clean Water Act.

CMP Project No: 19-1421-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Ms. Allison Buchtien P.O. Box 12873, Austin, Texas 78711-2873, or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Buchtien at the above address or by email.

TRD-201902927

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: August 28, 2019

Texas Health and Human Services Commission

Public Notice - Maximum Fees Allowed for Providing Health Care Information - Effective September 1, 2019

The Health and Human Services Commission licenses and regulates the operation of general and special hospitals in accordance with Chapter 241 of the Texas Health and Safety Code. In 1995, the Texas Legislature amended this law to address the release and confidentiality of health care information. In 2009, the Texas Legislature amended the statute again to change the definition of health care information and to add a category of fees for records provided on digital or other electronic media and delivered electronically.

In accordance with Health and Safety Code, §241.154(e), the fee effective as of September 1, 2018, for providing a patient's health care information has been increased by 1.4% to reflect the most recent changes to the consumer price index that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers as published by the Bureau of Labor Statistics of the United States Department of Labor.

This information is provided only as a courtesy to licensed hospitals. Hospitals are responsible for verifying that fees for health care information are charged in accordance with Health and Safety Code, Chapters 241, 311, and 324.

The current fees relate to the following provisions of the Health and Safety Code, §241.154(b) - (d):

(b) Except as provided by subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information except payment information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of copies and which may not exceed \$48.77; and

(A) a charge for each page of:

(i) \$1.64 for the 11th through the 60th page of provided copies;

(ii) \$.80 for the 61st through the 400th page of provided copies;

(iii) \$.44 for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies;

(2) if the requested records are stored on microform, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed \$74.30; and

(A) \$1.69 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(3) if the requested records are provided on a digital or other electronic medium and the requesting party requests delivery in a digital or electronic medium, including electronic mail:

(A) a retrieval or processing fee, which may not exceed \$88.36; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(c) In addition, the hospital or its agent may charge a reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Civil Practice and Remedies Code, §22.004; and

(2) written responses to a written set of questions, not to exceed \$10.00 for a set.

(d) A hospital may not charge a fee for:

(1) providing health care information under subsection (b) to the extent the fee is prohibited under Health and Safety Code, Chapter 161, Subchapter M;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payer, except as provided under Health and Safety Code, §311.002(f); or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Labor Code, Chapter 408.

The statutes referenced in this notice may be found on the Internet at: Health and Safety Code, <http://www.statutes.legis.state.tx.us?link=HS> Labor Code, <http://www.statutes.legis.state.tx.us?link=LA>

Civil Practice and Remedies Code, <http://www.statutes.legis.state.tx.us?link=CP>

Should you have questions, you may contact the Health and Human Services Commission, Facility Licensing Group, Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 834-6648.

TRD-201902865

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 22, 2019

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the second half of July, 2019, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Baytown	Raven Butene 1 L.L.C.	L07009	Baytown	00	07/22/19
Throughout TX	Houston	L07010	Houston	00	07/26/19
Throughout TX	Wolverine Oilfield Technologies L.L.C.	L07011	Houston	00	07/31/19

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Alvin	Ascend Performance Materials Texas L.L.C.	L06630	Alvin	06	07/18/19
Amarillo	BSA Hospital L.L.C. dba The Don and Sybil Harrington Cancer Center A Department of Baptist St. Anthony's Hospital	L06556	Amarillo	10	07/26/19
Arlington	Texas Health Arlington Memorial Hospital	L02217	Arlington	119	07/26/19
Arlington	Columbia Medical Center of Arlington Subsidiary L.P. dba Medical Center of Arlington	L02228	Arlington	88	07/17/19
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	166	07/18/19
Conroe	Chevron Phillips Chemical Company L.P. dba Drilling Specialties Company A Division of Chevron Phillips Chemical Company	L04825	Conroe	21	07/16/19
Dallas	Cardinal Health 414 L.L.C. dba Cardinal Nuclear Pharmacy Services	L02048	Dallas	156	07/23/19
Del Rio	Val Verde Hospital Corporation dba Val Verde Regional Medical Center	L01967	Del Rio	40	07/18/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Memorial Campus	L02353	El Paso	142	07/16/19
El Paso	Tenet Hospitals Limited dba The Hospitals of Providence Sierra Campus	L02365	El Paso	109	07/16/19
El Paso	Texas Oncology P.A. dba El Paso Cancer Treatment Center – East	L05771	El Paso	12	07/18/19
Flower Mound	Texas Oncology P.A.	L05526	Flower Mound	31	07/25/19
Fort Worth	Texas Oncology P.A.	L05545	Fort Worth	65	07/18/19
Frisco	Baylor Scott & White Medical Center – Centennial	L06992	Frisco	01	07/17/19
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	243	07/26/19
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	178	07/31/19
Houston	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Services	L01911	Houston	164	07/25/19
Houston	Memorial Hermann Health System dba Memorial Hermann Katy Hospital	L03052	Houston	96	07/26/19
Houston	Memorial Hermann Medical Group	L06430	Houston	35	07/29/19
Houston	Memorial Hermann Health System dba Memorial Hermann Cypress Hospital	L06832	Houston	16	07/31/19
Humble	North Houston Heart and Vascular Associates P.A. dba Houston Heart and Vascular Associates	L06121	Humble	03	07/16/19
Huntsville	Pulse Physician Organization P.L.L.C.	L07007	Huntsville	01	07/30/19
La Porte	Petrochem Inspection Services Inc. dba TUV SUD America Chemical Oil and Gas	L04460	La Porte	133	07/25/19
Lewisville	Columbia Medical Center of Lewisville Subsidiary L.P. dba Medical Center of Lewisville	L02739	Lewisville	83	07/18/19
McKinney	Texas Oncology P.A. dba Texas Oncology	L06947	McKinney	06	07/17/19
Plano	Texas Oncology P.A. dba Texas Oncology	L06917	Plano	04	07/17/19
Plano	Texas Oncology P.A. dba Texas Oncology	L06917	Plano	05	07/24/19
Port Arthur	Motiva Enterprises L.L.C.	L05211	Port Arthur	23	07/31/19
Round Rock	Scott & White Hospital – Round Rock dba Baylor Scott & White Medical Center – Round Rock	L06085	Round Rock	31	07/22/19
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	169	07/19/19
San Marcos	Adventist Health System/Sunbelt Inc. dba Central Texas Medical Center	L03133	San Marcos	35	07/19/19
Sherman	Texas Oncology P.A. dba Teas Cancer Center Sherman	L05019	Sherman	34	07/25/19
Sioux Falls	DMS Health Technologies, Inc.	L05594	Sioux Falls	31	07/19/19
Sunnyvale	Texas Regional Medical Center L.L.C. dba Baylor Scott & White Medical Center Sunnyvale	L06692	Sunnyvale	05	07/31/19
Throughout TX	Texas A&M University	L00448	College Station	153	07/19/19
Throughout TX	Giles Engineering Associates Inc.	L04919	Dallas	15	07/16/19
Throughout TX	Radiation Consultants Inc.	L02179	Deer Park	41	07/22/19
Throughout TX	Advanced Inspection Technologies L.L.C.	L06608	Deer Park	09	07/16/19
Throughout TX	Hunter Well Science Inc.	L06413	Fort Worth	08	07/17/19
Throughout TX	Radiation Technology Inc.	L04633	Georgetown	36	07/26/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	C&J Spec Rent Services Inc. dba Casedhole Solutions	L06662	Houston	12	07/23/19
Throughout TX	Micro Motion Inc. dba Roxar	L06760	Houston	07	07/26/19
Throughout TX	Quartet Engineers P.L.L.C.	L06879	Houston	01	07/23/19
Throughout TX	Advanced Corrosion Technologies and Training L.L.C. dba ACTT – Advanced Corrosion Technologies and Training L.L.C.	L06508	La Porte	18	07/29/19
Throughout TX	Stronghold Inspection Ltd.	L06918	La Porte	06	07/16/19
Throughout TX	Liberty Oilfield Services L.L.C.	L06901	Odessa	03	07/17/19
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	160	07/30/19
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	212	07/31/19
Throughout TX	Schlumberger Technology Corporation	L06880	Sugar Land	07	07/31/19
Throughout TX	Evolution Well Services Operating L.L.C.	L06748	The Woodlands	04	07/22/19
Throughout TX	Braun Intertec Corporation	L06681	Tyler	12	07/25/19
Victoria	Equistar Chemicals L.P.	L04101	Victoria	22	07/81/19
Waco	Hillcrest Baptist Medical Center dba Baylor Scott & White Medical Center Hillcrest	L00845	Waco	124	07/26/19
Waco	Ascension Providence	L01638	Waco	74	07/18/19
Webster	David S. Hamer M.D., P.A. dba Southeast Houston Cardiology	L05364	Webster	14	07/30/19

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Angleton	Salim F. Dabaghi M.D., P.A.	L05353	Angleton	08	07/30/19
Kosse	Luminant Mining Co., L.L.C. dba Luminant	L06177	Kosse	02	07/16/19
San Antonio	South Texas Blood & Tissue Center	L04381	San Antonio	20	07/17/19
San Antonio	The University of Texas Health Science Center at San Antonio	L05217	San Antonio	26	07/29/19
Throughout TX	CMP Group L.L.C.	L02397	Katy	21	07/19/19

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Arlington	Texas Health Physicians Group dba Arlington Cancer Center	L06434	Arlington	06	07/16/19
Aransas Pass	North Bay General Hospital Inc. dba Care Regional Medical Center	L03446	Aransas Pass	42	07/16/19

TRD-201902858
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: August 22, 2019



Notice of Public Hearing - Implementation of House Bill
3703 Proposed New Rule Relating to Designating Incurable
Neurodegenerative Diseases

The Department of State Health Services (DSHS) will hold a public
hearing to accept public comments on the proposed new rule to imple-
ment House Bill 3703, 86th Legislature, Regular Session, 2019, which

amended Texas Occupations Code, Chapter 169, relating to designating incurable neurodegenerative diseases.

The public hearing will be conducted from 1:00 p.m. to 3:00 p.m. on September 11, 2019, at the Department of State Health Services, 1100 West 49th Street, Moreton Building, Room M-100, Austin, Texas 78756. If the time allotted does not accommodate the number of persons who register to speak on or before 3:00 p.m., DSHS will extend the public hearing to accommodate those registrants, however, that extension will only be until 5:00 p.m. on that date.

The public hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the public hearing. Comment time for each individual will be determined by the total number of persons registered to speak in the time allotted. If time permits, comments will be limited to three minutes per speaker but may be further limited by DSHS if more registrants need to be accommodated.

For additional information, contact Raiza Ruiz, P.O. Box 149347 (Mail Code 1965), Austin, Texas 78714-9347, (512) 776-3829 or raiza.ruiz@dshs.texas.gov.

This hearing is open to the public. No reservations are required and there is no cost to attend this hearing.

Persons with disabilities who plan to attend this meeting and require auxiliary aids or services are asked to contact Carolyn Barrett at (512) 776-7688 or Carolyn.pittman@dshs.texas.gov, 72 hours prior to the meeting so that appropriate arrangements may be made.

TRD-201902926

Barbara L. Klein

General Counsel

Department of State Health Services

Filed: August 28, 2019

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Texas Department of Housing and Community Affairs

Public Notice of Demolition/Reconstruction of Case De Mañana Apartments

Casa de Mañana Apartments is a 99-unit affordable multifamily complex located on 6.5 acres at 4702 Old Brownsville Rd., Corpus Christi, Texas. The 46-year-old complex consists of 25 1-bdrm, 20 2-bdrm, 39 3-bdrm units and 15 4-bdrm units. The same number and type of units will be reconstructed at the same location on a one-for-one basis. Demolition will begin in November 2019, and all units are anticipated to be reconstructed by January 2021. Residents will be temporarily relocated for 12 months or less. Funding is provided through Wells Fargo debt and Low Income Housing Tax Credit (LIHTC) equity with HOME funding provided by TDHCA and the City of Corpus Christi,

along with an owner loan and contractor loyalty contribution. All 99 units will remain lower income dwelling units for 35 years from the date of initial occupancy as recorded in the Development's HOME and LIHTC Land Use Restriction Agreements.

Public Comment Period

Starts at 8:00 a.m., Austin local time on September 6, 2019.

Ends at 5:00 p.m., Austin local time on September 20, 2019.

Comments received after 5:00 p.m., Austin local time on September 20, 2019, will not be accepted.

Written comments may be submitted to:

Texas Department of Housing and Community Affairs

Attn: Carmen Roldan, Casa de Mañana Apartments

P.O. Box 13941 Austin, Texas 78711-3941

Email: carmen.rolدان@tdhca.state.tx.us

Written comments may be submitted in hard copy or email formats within the designated public comment period. Those making public comment are encouraged to reference the specific rule, policy, or plan related to their comment, as well as a specific reference or cite associated with each comment.

Please be aware that all comments submitted to the TDHCA will be considered public information.

Las personas que no pueden hablar, leer, escribir o entender el idioma inglés pueden llamar al (512) 475-3800 o al número de llamada gratuita (800) 525-0657 para solicitar asistencia con la traducción de documentos, eventos u otra información del Departamento de Vivienda y Asuntos Comunitarios de Texas (Texas Department of Housing and Community Affairs).

Quédese en la línea y permanezca en silencio durante nuestras indicaciones automatizadas de voz en inglés hasta que un representante responda. El representante lo pondrá en espera y le comunicará con un intérprete para ayudarle con su llamada.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Street Address: 221 East 11th Street, Austin, Texas 78701

Mailing Address: P.O. Box 13941, Austin, Texas 78711-3941

Main Number: (512) 475-3800

Toll Free: (800) 525-0657

Email: info@tdhca.state.tx.us

Web: www.tdhca.state.tx.us

Location of lower-income dwelling units that will be demolished



TRD-201902959
 Bobby Wilkinson
 Executive Director
 Texas Department of Housing and Community Affairs
 Filed: August 28, 2019



Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Triple-S Vida Inc., a foreign life, accident and/or health company. The home office is in San Juan, Puerto Rico.

Application to do business in the state of Texas for DB Insurance Co., Ltd (U.S. Branch), a foreign fire and/or casualty company. The home office is in Honolulu, Hawaii.

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-201902928
 James Person
 General Counsel
 Texas Department of Insurance
 Filed: August 28, 2019



Texas Lottery Commission

Scratch Ticket Game Number 2196 "Monopoly™ 100X"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2196 is "MONOPOLY™ 100X". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2196 shall be \$10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2196.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 10X SYMBOL, 20X SYMBOL, 100X SYMBOL, \$10.00, \$15.00, \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000, \$50,000 and \$500,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2196 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI

40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
10X SYMBOL	WINX10
20X SYMBOL	WINX20
100X SYMBOL	WINX100
\$10.00	TEN\$
\$15.00	FFN\$
\$20.00	TWY\$
\$25.00	TWV\$
\$30.00	TRTY\$
\$50.00	FFTY\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$10,000	10TH
\$50,000	50TH
\$500,000	500TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The

Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2196), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2196-0000001-001.

H. Pack - A Pack of the "MONOPOLY™ 100X" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "MONOPOLY™ 100X" Scratch Ticket Game No. 2196.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MONOPOLY™ 100X" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose fifty-six (56) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. If the player reveals a "100X" Play Symbol, the player wins 100 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly fifty-six (56) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly fifty-six (56) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the fifty-six (56) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the fifty-six (56) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 15 and \$15).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

E. No matching WINNING NUMBERS Play Symbols on a Ticket, unless restricted by other parameters, play action or prize structure.

F. A non-winning Prize Symbol will never match a winning Prize Symbol.

G. A Ticket may have up to five (5) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. The "20X" (WINX20) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

J. The "100X" (WINX100) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONOPOLY™ 100X" Scratch Ticket Game prize of \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00 \$50.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONOPOLY™ 100X" Scratch Ticket Game prize of \$1,000, \$10,000, \$50,000 or \$500,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONOPOLY™ 100X" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MONOPOLY™ 100X" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "MONOPOLY™ 100X" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket Game prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "MONOPOLY™ 100X" Scratch Ticket may be entered into one (1) of five (5) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the

Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 13,080,000 Scratch Tickets in the Scratch Ticket Game No. 2196. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2196 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$10	1,569,600	8.33
\$20	784,800	16.67
\$30	523,200	25.00
\$50	392,400	33.33
\$100	130,800	100.00
\$200	25,942	504.20
\$500	4,360	3,000.00
\$1,000	654	20,000.00
\$10,000	8	1,635,000.00
\$50,000	4	3,270,000.00
\$500,000	6	2,180,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2196 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2196, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201902903

Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: August 26, 2019

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Texas Department of Motor Vehicles

Correction of Error

The Texas Department of Motor Vehicles adopted the repeal of 43 TAC §206.94 and §206.95 in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4514). The repeals were published in conjunction with the adoption of amendments to 43 TAC §206.92 and §206.93 as well as new sections 43 TAC §§206.94 - 206.99. Due to an error by the Texas Register, the repeals were published with an incorrect effective date. The correct effective date for the repeals, amendments and new sections is August 29, 2019.

TRD-201902909



North Central Texas Council of Governments

Request for Proposals for the 2020 North Central Texas Regional Transit On-Board Survey

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms to conduct the 2020 North Central Texas Regional Transit On-Board Survey. The goal of this project is to conduct a Regional Transit Travel Survey which would encompass all fixed bus routes, streetcar, GoLink, light rail, and commuter rail of the three major transit agencies in the Dallas/Fort Worth region: Dallas Area Rapid Transit (DART), Fort Worth Transportation Authority d/b/a Trinity Metro (Trinity Metro), and Denton County Transportation Authority (DCTA) in 2020. The purpose of the survey is to provide updated information regarding the transit users' travel patterns and trip-making behavior to assist the transit agencies in their planning process and for use in NCTCOG's Dallas-Fort Worth Regional Travel Model. The most recent transit travel survey for these agencies was a regional onboard survey effort conducted in 2014.

Proposals must be received no later than 5:00 p.m. Central Time, on Friday, October 4, 2019, to Kathleen Yu, Principal Transportation System Modeler, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. The Request for Proposals will be available at www.nctcog.org/rfp by the close of business on Friday, September 6, 2019.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201902920

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: August 27, 2019

Workforce Solutions Deep East Texas

Request for Quote 19-390 Marketing and Creative Services

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas (Board) is seeking marketing and creative services. Deadline for submitting a Proposal is September 27, 2019, at 5:00 p.m. The Request for Proposal (RFQ 19-390) is available at www.detwork.org or by submitting a request to: Karen Stubblefield, Bus. Dev., DETLWDB, 415 S. First St., Suite 110 B Lufkin, Texas 75901, phone (936) 639-8898, fax (936) 633-7491, or email kstubblefield@detwork.org.

TRD-201902866

Kim Moulder

Staff Service Specialist

Workforce Solutions Deep East Texas

Filed: August 23, 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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