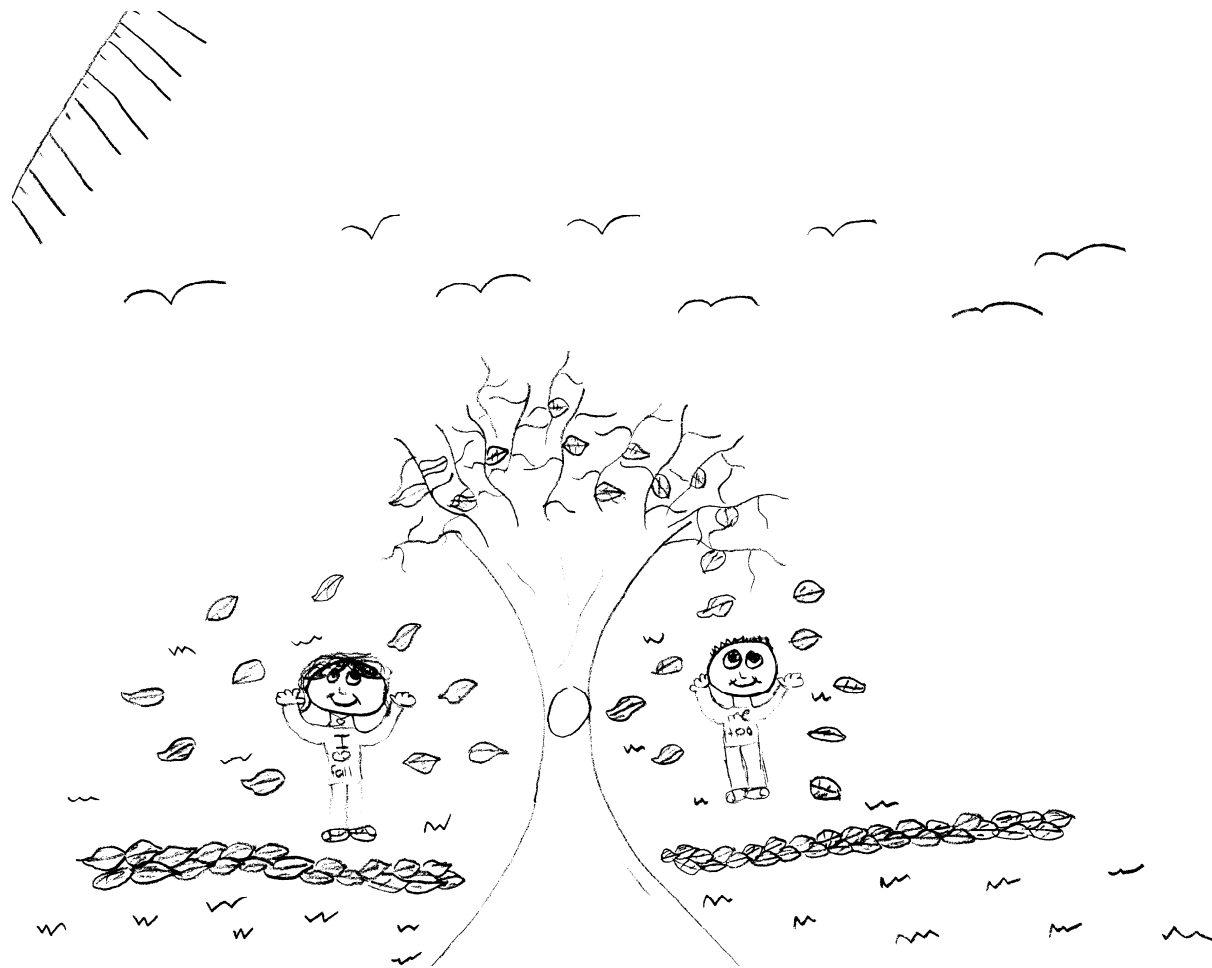

TEXAS REGISTER

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

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

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FAX (512) 463-5569

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

Secretary of State – Ruth R. Hughs

Director - Robert Sumners

Staff

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

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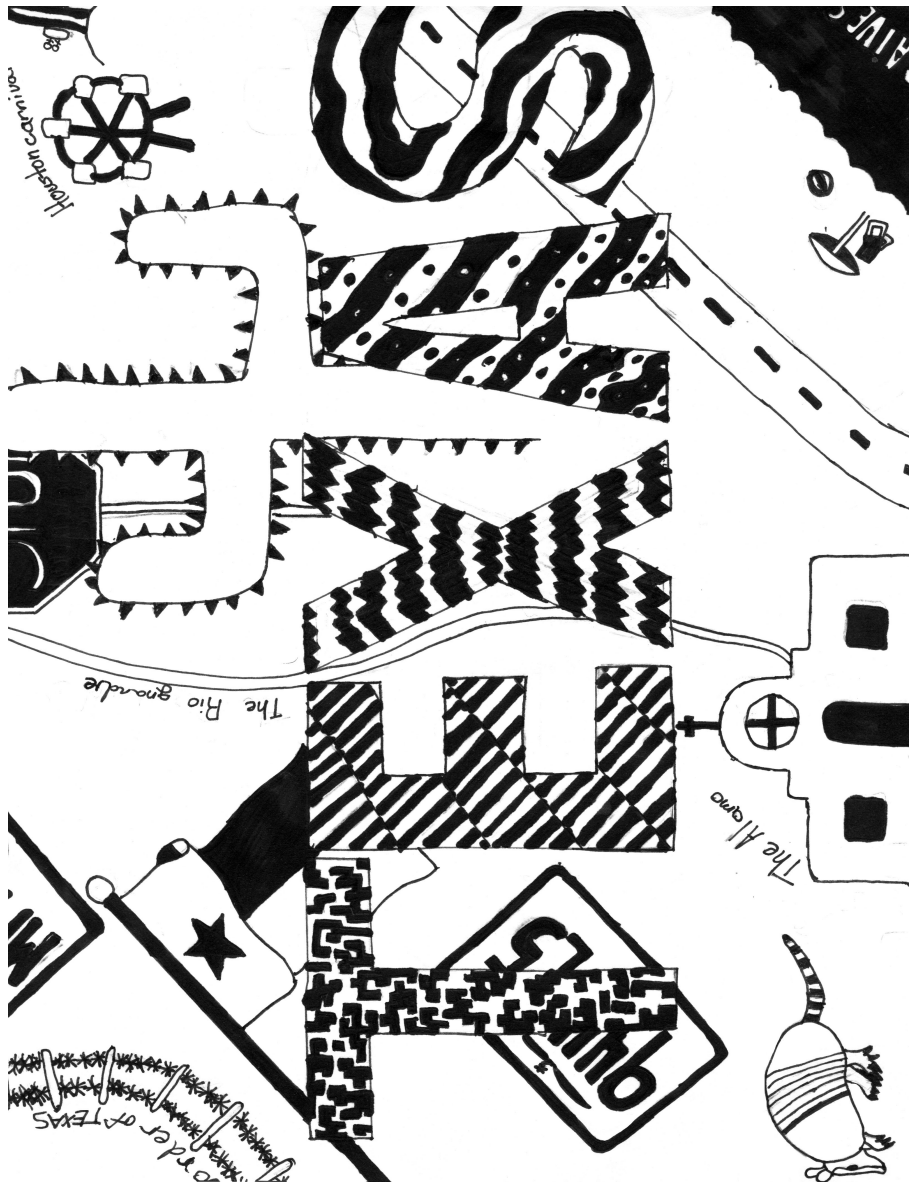
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THE GOVERNOR

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.

Appointments

Appointments for September 30, 2019

Appointed to the Texas Medical Board, for a term to expire April 13, 2025, Arun Agarwal of Dallas (replacing Timothy Webb of Houston, whose term expired).

Appointed to the Texas Medical Board, for a term to expire April 13, 2025, Devinder S. Bhatia, M.D. of Houston (replacing Surendra Kumar Varma, M.D. of Lubbock, whose term expired).

Appointed to the Texas Medical Board, for a term to expire April 13, 2025, Vanessa F. Hicks-Callaway of Victoria (replacing Frank S. Denton of Conroe, whose term expired).

Appointed to the Texas Medical Board, for a term to expire April 13, 2025, Roberto D. "Robert" Martinez, M.D. of Mission (Dr. Martinez is being reappointed).

Appointed to the Texas Medical Board, for a term to expire April 13, 2025, Satish Nayak, M.D. of Andrews (replacing Karl W Swann, M.D. of San Antonio, whose term expired).

Appointed to the Texas Medical Board, for a term to expire April 13, 2025, Jason K. Tibbels, M.D. of Bridgeport (replacing Margaret Carter McNeese, M.D. of Houston, whose term expired).

Appointed to the Podiatric Medical Examiners Advisory Board, for a term to expire February 1, 2023, Beil "Cory" Brown, D.P.M. of Albany (replacing Brian B. Carpenter, D.P.M. of Paradise, who resigned).

Appointments for October 1, 2019

Appointed to the Upper Colorado River Authority, for a term to expire February 1, 2025, Nancy C. Blackwell of Ballinger (replacing Martin Needham Lee of Bronte, whose term expired).

Appointed to the Upper Colorado River Authority, for a term to expire February 1, 2025, Fred B. Hernandez, Jr. of San Angelo (replacing William R. "Bill" Hood of Robert Lee, whose term expired).

Appointed to the Upper Colorado River Authority, for a term to expire February 1, 2025, Mason B. Vaughan of Eldorado (replacing William S. Holland of San Angelo, whose term expired).

Designated as presiding officer of the Texas Board of Professional Geoscientists, for a term to expire at the pleasure of the Governor, Becky L. Johnson of Fort Worth.

Appointed to the Texas Board of Professional Geoscientists, for a term to expire February 1, 2025, Edward F. "Ed" Janak, Jr. of Fredericksburg (replacing Charles T. "Tom" Hallmark of Hearne, whose term expired).

Appointed to the Texas Board of Professional Geoscientists, for a term to expire February 1, 2025, Drusilla Knight-Villarreal of Corpus Christi (Ms. Knight-Villarreal is being reappointed).

Appointed to the Texas Board of Professional Geoscientists, for a term to expire February 1, 2025, William "David" Prescott, II of Amarillo (Mr. Prescott is being reappointed).

Appointments for October 2, 2019

Appointed to the Lavaca-Navidad River Authority, for a term to expire May 1, 2023, Lee M. Kucera of Edna (replacing Michelle L. Bubela of Edna, who resigned).

Appointed to the Lavaca-Navidad River Authority, for a term to expire May 1, 2025, Callaway V. Aimone of Edna (replacing Glenn T. Martin of Edna, whose term expired).

Appointed to the Lavaca-Navidad River Authority, for a term to expire May 1, 2025, Leonard A. Steffek of Edna (Mr. Steffek is being reappointed).

Appointed to the Lavaca-Navidad River Authority, for a term to expire May 1, 2015, Charles D. "Charlie" Taylor of Palacios (Mr. Taylor is being reappointed).

Greg Abbott, Governor

TRD-201903567



Proclamation 41-3694

TO ALL TO WHOM THESE PRESENTS SHALL COME:

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

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

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

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

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

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

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 28th day of September, 2019.

Greg Abbott, Governor

TRD-201903568



THE ATTORNEY GENERAL

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

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

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

Requests for Opinions

RQ-0310-KP

Requestor:

The Honorable Charles Perry
Chair, Committee on Water & Rural Affairs
Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of the Guadalupe-Blanco River Authority to impose fees or by election establish a taxing district to fund the replacement, operation, and maintenance of dams (RQ-0310-KP)

Briefs requested by October 28, 2019

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

TRD-201903533

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: October 1, 2019



Opinions

Opinion No. KP-0269

The Honorable Chris Taylor

Tom Green County Attorney

122 West Harris

San Angelo, Texas 76903-5835

Re: Whether a county treasurer is authorized to use an online auction site to sell unclaimed property pursuant to chapter 76 of the Property Code (RQ-0282-KP)

S U M M A R Y

Chapter 76 of the Property Code requires the county treasurer to sell abandoned property subject to its provisions at a public sale conducted in the county's jurisdiction. If the county treasurer determines the highest bid from the public sale is insufficient, then the property may be sold through a public or private sale, including an online auction.

Opinion No. KP-0270

The Honorable Mark A. Gonzalez

105th Judicial District Attorney

Nueces County Courthouse

901 Leopard, Room 206

Corpus Christi, Texas 78401-3681

Re: Authority of the State to obtain an arrest warrant for a defendant previously released on pretrial bond conditions if credible evidence exists he violated those conditions (RQ-0283-KP)

S U M M A R Y

A court likely may, without a hearing, order a defendant's rearrest to secure the defendant's presence at a bond-revocation hearing, based on an officer's sworn affidavit showing probable cause that the defendant has violated bond conditions.

Opinion No. KP-0271

The Honorable Noble D. Walker, Jr.

Hunt County District Attorney

Post Office Box 441

Greenville, Texas 75403-0441

Re: Whether a sheriff may expend commissary funds for a salary stipend for a deputy sheriff with duties related to operation of the commissary (RQ-0284-KP)

S U M M A R Y

The sheriff's "exclusive control" of commissary funds under subsection 351.0415(b)(1) of the Local Government Code and his or her authority under subsection 351.0415(c) to "use commissary proceeds only" for statutory purposes gives the Hunt County sheriff the authority to initially determine whether an expenditure is authorized, subject to administrative review by the Commission on Jail Standards and judicial review under an abuse of discretion standard.

A court would likely conclude that an expenditure of commissary funds under subsection 351.0415(c) is not arbitrary if the amount of the expenditure is reasonable in light of the performance of the authorized activities.

Opinion No. KP-0272

The Honorable Ryan Guillen

Chair, Committee on Resolutions Calendars

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether chapter 1704 of the Occupations Code prohibits a jail or detention facility from using a third-party contractor to provide persons in the custody of law enforcement with information on available bail bond services (RQ-0286-KP)

S U M M A R Y

Subsection 1704.304(c) of the Occupations Code prohibits a bail bond surety from soliciting business in a police station, jail, prison, detention facility, or other place of detention for persons in the custody of law enforcement. Based on the description provided, a court would likely conclude that a signboard installed inside a jail facility by a third party providing information about available bail bond services does not

amount to a solicitation and is therefore not prohibited under subsection 1704.304(c).

The First Amendment does not impose any duty on a public official with control over a detention facility to provide a public forum for third-party contractors to install and maintain an informational signboard in the facility.

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

TRD-201903534

Ryan L. Bangert

Deputy Attorney General for Legal Counsel

Office of the Attorney General

Filed: October 1, 2019



PROPOSED RULES

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

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

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

16 TAC §22.246

The Public Utility Commission of Texas (commission) proposes amendments to §22.246, relating to Administrative Penalties. The proposed amendments will implement Senate Bill 1358, 86th Legislature, Regular Session, which modified requirements for notices of violation issued under Public Utility Regulatory Act (PURA) §15.024 in cases where the person to whom the notice was issued does not respond. The amendments also make stylistic updates. Project Number 49875 is assigned to this proceeding.

Growth Impact Statement

The commission provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The commission has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

- (1) the proposed rule will not create a government program nor will it eliminate a government program;
- (2) implementation of the proposed rule will not require the creation of new employee positions nor will it require the elimination of existing employee positions;
- (3) implementation of the proposed rule will not require an increase nor will it require a decrease in future legislative appropriations to the commission;
- (4) the proposed rule will not require an increase nor will it require a decrease in fees paid to the commission;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will limit an existing regulation by eliminating a requirement that certain cases must be sent to the State Office of Administrative Hearings;
- (7) the proposed rule will not change the number of individuals subject to the rule's applicability; and
- (8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rule will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

Taylor Kilroy, Managing Attorney for the Oversight and Enforcement Division, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Kilroy has also determined that for each year of the first five years the proposed section is in effect, the anticipated public benefits expected as a result of the adoption of the proposed rule will be increased efficiency due to elimination of unneeded hearings. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the Public Utility Commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking, if requested in accordance with Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Thursday, October 25, 2019 at 9:00 a.m. The request for a public hearing must be received within 14 days after publication. If no request for a public hearing is received and the commission staff cancels the hearing, it will

make a filing in this project prior to the scheduled date for the hearing.

Public Comments

Comments on the proposed amendments may be filed with the commission's filing clerk at 1701 North Congress Avenue, Austin, Texas or mailed to P.O. Box 13326, Austin, TX 78711-3326, within 14 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed by §22.71(c) of 16 Texas Administrative Code. Reply comments may be submitted within 28 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. All comments should refer to project number 49875.

Statutory Authority

This amendment is proposed under §14.002 and §14.052 of the Public Utility Regulatory Act, Tex. Util. Code (West 2016 and Supp. 2017) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross reference to statutes: Public Utility Regulatory Act §§ 14.002 and 14.052.

§22.246. Administrative Penalties.

(a) (No change.)

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

(1) - (6) (No change.)

(c) Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.

(1) (No change.)

(2) (No change.)

(3) The amount of the administrative penalty must [shall] be based on:

(A) - (F) (No change.)

(d) Amount of administrative penalty for violations of the TWC or a rule or order adopted under chapter 13 of the TWC.

(1) (No change.)

(2) (No change.)

(3) The amount of the penalty must [shall] be based on:

(A) - (F) (No change.)

(e) Initiation of investigation. Upon receiving an allegation of a violation or of a continuing violation, the executive director will [shall] determine whether an investigation should be initiated.

(f) Report of violation or continuing violation. If, based on the investigation undertaken in accordance with subsection (e) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.

(1) Contents of the report. The report must [shall] state the facts on which the determination is based and a recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the administrative penalty and, if applicable under §25.503 of this title, a recommendation that excess revenue be disgorged.

(2) Notice of report.

(A) Within 14 days after the report is issued, the executive director will [shall, by certified mail, return receipt requested,] give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report. The notice may be given by regular or certified mail.

(B) For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, within ten days after the report is issued, the executive director will [shall], by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report.

(C) (No change.)

(D) If the commission sends written notice to a person by mail addressed to the person's mailing address as maintained in the commission's records, the person is deemed to have received notice:

(i) on the fifth day after the date that the commission sent the written notice, for notice sent by regular mail; or

(ii) on the date the written notice is received or delivery is refused, for notice sent by certified mail.

(g) Options for response to notice of violation or continuing violation.

(1) Opportunity to remedy.

(A) (No change.)

(B) Within 40 days of the date of receipt of a notice of violation set out in subsection (f)(2) of this section, the person against whom the administrative penalty or disgorgement may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent must [shall] be evidenced in writing, under oath, and supported by necessary documentation.

(C) (No change.)

(D) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director will [shall] make a determination as to what further proceedings are necessary.

(E) If the executive director determines that the alleged violation is a continuing violation, the executive director will [shall] institute further proceedings, including referral of the matter for hearing under subsection (i) of this section.

(2) Payment of administrative penalty₂ [~~and/or~~] disgorged excess revenue₂ or both. Within 20 days after the date the person receives the notice set out in subsection (f)(2) of this section, the person may accept the determination and recommended administrative penalty and, if applicable, the recommended excess revenue to be disgorged through a written statement sent to the executive director. If this option

is selected, the person must [shall] take all corrective action required by the commission. The commission by written order will [shall] approve the determination and impose the recommended administrative penalty and, if applicable, recommended disgorged excess revenue or order a hearing on the determination and the recommended penalty.

(3) (No change.)

(4) Failure to respond. If the person fails to timely respond to the notice set out in subsection (f)(2) of this section, the commission by order will approve the determination and impose the recommended penalty or order a hearing on the determination and the recommended penalty.

(h) Settlement conference. A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the administrative penalty, disgorged excess revenue if applicable, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

(1) If a settlement is reached:

(A) the parties must [shall] file a report with the executive director setting forth the factual basis for the settlement;

(B) the executive director will [shall] issue the report of settlement to the commission; and

(C) (No change.)

(2) If a settlement is reached after the matter has been referred to the State Office of Administrative Hearings, [SOAH,] the matter will [shall] be returned to the commission. If the settlement is approved, the commission will [shall] issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.

(i) Hearing. If a person requests a hearing under subsection (g)(3) of this section, or the commission orders a hearing [~~fails to respond timely to the notice of the report of violation or continuing violation provided~~] under subsection (g)(4) [~~(f)(2)~~] of this section, the commission will [~~or if the executive director determines that further proceedings are necessary, the executive director shall set a hearing, provide notice of the hearing to the person, and~~] refer the case to SOAH under §22.207 of this title (relating to Referral to State Office of Administrative Hearings) and give notice of the referral to the person. For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, if the person charged with the violation fails to timely respond to the notice, the commission by order will [shall] assess the recommended penalty or order a hearing to be held on the findings and recommendations in the report. If the commission orders a hearing [~~or the executive director sets a hearing~~], the case will [shall] then proceed as set forth in paragraphs (1) - (5) of this subsection.

(1) The commission will [shall] provide the SOAH administrative law judge a list of issues or areas that must be addressed.

(2) The hearing must [shall] be conducted in accordance with the provisions of this chapter and notice of the hearing must be provided in accordance with the Administrative Procedure Act.

(3) The SOAH administrative law judge will [shall] promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:

(A) - (C) (No change.)

(4) (No change.)

(5) Notice of the commission's order issued under paragraph (4) of this subsection must [shall] be provided under the Government Code, chapter 2001 and §22.263 of this title (relating to Final Orders) and must [shall] include a statement that the person has a right to judicial review of the order.

(j) Parties to a proceeding. The parties to a proceeding under chapter 15 of PURA relating to administrative penalties or disgorgement of excess revenue will [shall] be limited to the person who is alleged to have committed the violation or continuing violation and the commission, including the independent market monitor. This does not apply to a subsequent proceeding under subsection (k) of this section.

(k) Distribution of Disgorged Excess Revenues. Disgorged excess revenues must [shall] be remitted to an independent organization, as defined in PURA §39.151. The independent organization must [shall] distribute the excess revenue to affected wholesale electric market participants in proportion to their load during the intervals when the violation occurred to be used to reduce costs or fees incurred by retail electric customers. The load of any market participants that are no longer active at the time of the distribution will [shall] be removed prior to calculating the load proportions of the affected wholesale electric market participants that are still active. However, if the commission determines other wholesale electric market participants are affected or a different distribution method is appropriate, the commission may direct commission staff to open a subsequent proceeding to address those issues.

(1) No later than 90 days after the disgorged excess revenues are remitted to the independent organization, the monies must [shall] be distributed to affected wholesale electric market participants active at the time of distribution, or the independent organization must [shall], by that date, notify the commission of the date by which the funds will be distributed. The independent organization must [shall] include with the distributed monies a communication that explains the docket number in which the commission ordered the disgorged excess revenues, an instruction that the monies must [shall] be used to reduce costs or fees incurred by retail electric customers, and any other information the commission orders.

(2) (No change.)

(3) Any affected wholesale electric market participant receiving disgorged funds that is affiliated with the person from whom the excess revenue is disgorged must [shall] distribute all of the disgorged excess revenues directly to its retail customers and must [shall] provide certification under oath to the commission that the entirety of the revenues was [~~were~~] distributed to its retail electric customers.

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 September 30, 2019.

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Theresa Walker

Assistant Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7252



PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

16 TAC §31.13

The Texas Alcoholic Beverage Commission proposes creation of §31.13, Enhanced Contract Monitoring. As required by Senate Bill 20, 84th Texas Legislature (Regular Session, 2015), this rule requires the commission to identify contracts that require enhanced monitoring, provides factors to be considered in identifying these contracts, and requires monitoring reports to be provided to the executive director and/or Commissioners.

Clark Smith, General Counsel, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on state or local government attributable to the rule.

The proposed new rule will have no fiscal or regulatory impact on small businesses or rural communities. The proposed new rule impacts the internal contract management procedures of the commission. It does not impose any additional regulatory requirements on small businesses, micro-businesses, and persons regulated by the commission.

This paragraph constitutes the commission's government growth impact statement for the proposed new rule. The analysis addresses the first five years the proposed new rule would be in effect. The proposed new rule neither creates nor eliminates a government program. The proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed new rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed new rule does not increase or decrease fees paid to the agency. The proposed new rule creates a new regulation, as that term is defined in 34 Texas Administrative Code §11.1(a). The proposed new rule does not expand, limit, or repeal an existing regulation. The proposed new rule neither increases nor decreases the number of individuals subject to the rule's applicability. The proposed new rule does not have a direct effect on the state's economy, either positively or adversely.

Mr. Smith has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the commission will more closely monitor certain contracts with the commission to ensure the commission's governing body is aware of any serious issues or risks associated with those contracts, so that issues can be addressed and risks mitigated.

Comments on the proposed rule may be submitted in writing to Clark Smith, General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the new rule on Tuesday, October 29, 2019, at 1:30 p.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029.

The proposed addition is authorized by Tex. Gov't Code §2261.253(c), which requires each state agency to establish by rule a procedure for identifying contracts for enhanced monitoring, and by §28 of Senate Bill 20, 84th Texas Legislature (Regular Session, 2015) requiring all affected state agencies to adopt rules to implement the changes in law made by the bill.

This rule relates to Government Code §2261.253(c).

§31.13. Enhanced Contract Monitoring.

(a) The Texas Alcoholic Beverage Commission (TABC) shall identify contracts that require enhanced monitoring.

(b) In determining which contracts require enhanced monitoring, TABC shall consider factors including:

- (1) contract amount;
- (2) risk;
- (3) special circumstances of project; and
- (4) scope of goods or services provided.

(c) TABC shall adopt procedures to administer the enhanced contract monitoring program.

(d) Enhanced contract monitoring reports shall be regularly provided to the executive director, and when applicable, to the Commissioners.

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 September 27, 2019.

TRD-201903481

Clark Smith

General Counsel

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: November 10, 2019

For further information, please call: (512) 206-3367



CHAPTER 33. LICENSING

SUBCHAPTER B. LICENSE AND PERMIT

SURCHARGES

16 TAC §33.28

The Texas Alcoholic Beverage Commission proposes creation of §33.28, Consumer Delivery Permit Fee. This rule provides that the annual fee for a statewide permit to deliver alcoholic beverages to consumers, as authorized in new Chapter 57 of the Alcoholic Beverage Code, is \$5,000.

Clark Smith, General Counsel, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on local government attributable to the rule. The fiscal impact of the bill to state revenue cannot be determined at this time because the number of prospective applicants is unknown. Fees received by the commission under this rule may have a minimal positive fiscal impact on state government.

The proposed new rule will have no fiscal or regulatory impact on small or micro-businesses or rural communities. The fee set by the rule is not mandatory and only accrues to businesses who choose to seek the associated permit. The commission anticipates that due to the nature of the consumer delivery permit, small and micro-businesses will not elect to apply for it.

This paragraph constitutes the commission's government growth impact statement for the proposed new rule. The analysis ad-

dresses the first five years the proposed new rule would be in effect. The proposed new rule neither creates nor eliminates a government program. The proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed new rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed new rule increases fees paid to the agency. The proposed new rule creates a new regulation, as that term is defined in 34 Texas Administrative Code §11.1(a). The proposed new rule does not expand, limit, or repeal an existing regulation. The proposed new rule neither increases nor decreases the number of individuals subject to the rule's applicability. The proposed new rule does not have a direct effect on the state's economy, either positively or adversely.

Mr. Smith has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the fee will offset costs to the agency in implementing the new consumer delivery permit, the implementation of which gives consumers the option to have alcoholic beverages delivered to them by permit holders, such as transportation network companies.

Comments on the proposed rule may be submitted in writing to Clark Smith, General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the new rule on Tuesday, October 29, 2019, at 1:30 p.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029.

The proposed addition is authorized by Alcoholic Beverage Code §57.03, which requires the commission to establish by rule the annual state fee for a consumer delivery permit.

This rule relates to Alcoholic Beverage Code §57.03.

§33.28. Consumer Delivery Permit Fee.

The annual fee for a consumer delivery permit under Chapter 57 of the Alcoholic Beverage Code shall be \$5,000.

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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Clark Smith

General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3367



16 TAC §33.29

The Texas Alcoholic Beverage Commission proposes creation of §33.29, Registration of Nonresident Brewer's Agent and Nonresident Manufacturer's Agent. This rule requires that agents

acting on behalf of nonresident brewers and nonresident manufacturers register with the commission and pay an annual fee of \$2,500.

Clark Smith, General Counsel, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on local government attributable to the rule. The fiscal impact of the bill to state revenue cannot be determined at this time because the number of prospective registrants is unknown. Fees received by the commission under this rule may have a minimal positive fiscal impact on state government.

The proposed rule does not have a significant adverse economic effect or impose significant regulatory burden on small businesses, micro-businesses, or rural communities. The commission will develop a streamlined registration process, including a simple form.

This paragraph constitutes the commission's government growth impact statement for the proposed new rule. The analysis addresses the first five years the proposed new rule would be in effect. The proposed new rule neither creates nor eliminates a government program. The proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed new rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed new rule increases fees paid to the agency. The proposed new rule creates a new regulation, as that term is defined in 34 TAC §11.1(a). The proposed new rule does not expand, limit, or repeal an existing regulation. The proposed new rule neither increases nor decreases the number of individuals subject to the rule's applicability. The proposed new rule does not have a direct effect on the state's economy, either positively or adversely.

Mr. Smith has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the commission will be able to identify and locate agents of nonresident brewers and nonresident manufacturers in order to enforce the provisions and restrictions of new Alcoholic Beverage Code Chapter 57.

Comments on the proposed rule may be submitted in writing to Clark Smith, General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the new rule on Tuesday, October 29, 2019, at 1:30 p.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029.

The proposed new rule is authorized by Alcoholic Beverage Code §5.31, which authorizes the agency to prescribe rules necessary to carry out the provisions of the Code.

This rule relates to Alcoholic Beverage Code §5.31.

§33.29. Registration of Nonresident Brewer's Agent and Nonresident Manufacturer's Agent.

(a) Nonresident brewer's and nonresident manufacturer's agents shall register with the Commission in the manner prescribed by the Commission, as authorized by Chapter 57 of the Alcoholic Beverage Code.

(b) The annual fee to register a nonresident brewer's or non-resident manufacturer's agent shall be \$2,500.

(c) This section expires on September 1, 2021.

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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Clark Smith

General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3367



CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES

16 TAC §34.3

The Texas Alcoholic Beverage Commission proposes amendments to §34.3, Schedule of Sanctions and Penalties for Major Regulatory Violations. The proposed amendment establishes penalties for exceeding the volume limitation for sales to consumers by certain brewers and manufacturers under Alcoholic Beverage Code Sections 12.052 and 62.122. The proposed amendment provides for a written warning upon the first offense; a three-day license or permit suspension or \$500 per day fine for a second violation; and a five-day license or permit suspension or \$1,000 per day fine for a third violation.

Clark Smith, General Counsel, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no fiscal impact on state or local government attributable to the rule.

The proposed amendment will have no fiscal or regulatory impact on small businesses or rural communities.

This paragraph constitutes the commission's government growth impact statement for the proposed amendment. The analysis addresses the first five years the proposed amendment would be in effect. The proposed amendment neither creates nor eliminates a government program. The proposed amendment does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed amendment requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed amendment establishes a new administrative penalty to be paid to the commission, in lieu of license or permit suspension. The proposed amendment creates a new regulation, as that term is defined in 34 Texas Administrative Code §11.1(a). The proposed amendment does not expand, limit, or repeal an existing regulation. The proposed amendment neither increases nor decreases the number of individuals subject to the rule's applicability. The proposed amendment does not have a direct effect on the state's economy, either positively or adversely.

Mr. Smith has determined that for each year of the first five years that the proposed amendment will be in effect, the public will benefit because the commission will be able to implement and enforce the amendments to the Alcoholic Beverage Code

authorizing certain manufacturers and brewers to sell a limited amount of their product to members of the public for off-premises consumption.

Comments on the proposed amendment may be submitted in writing to Clark Smith, General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the amendment on Tuesday, October 29, 2019, at 1:30 p.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029.

The proposed amendments are authorized by Alcoholic Beverage Code §§12.052(g) and 62.122(g), directing the commission to adopt rules establishing administrative penalties for violations under those statutes; and by Alcoholic Beverage Code §5.31, which authorizes the agency to prescribe rules necessary to carry out the provisions of the Alcoholic Beverage Code.

This rule relates to Alcoholic Beverage Code §§12.052(g) and 62.122(g).

§34.3. Schedule of Sanctions and Penalties for Major Regulatory Violations.

An act or failure to act which results in a violation of a major regulatory provision of the code or rules will be assessed sanctions and penalties as follows:

Figure: 16 TAC §34.3

[Figure: 16 TAC §34.3]

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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Clark Smith

General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3367



CHAPTER 41. AUDITING SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.57

The Texas Alcoholic Beverage Commission proposes new §41.57, relating to Warehouse Registration, to implement Alcoholic Beverage Code ("Code") §62.08(e).

Section 214 of House Bill 1545, 86th Texas Legislature (Regular Session, 2019) added subsection (e) to Code §62.08. Effective September 1, 2019, subsection (e) requires that the holder of a manufacturer's or distributor's license must register with the commission each warehouse used by the manufacturer or distributor to store beer. The subsection also requires the commis-

sion by rule to determine the information that is required to register a warehouse under this subsection. Effective September 1, 2021, the subsection will require registration by the holder of a brewer's or distributor's license of each warehouse utilized to store malt beverages.

The proposed new rule requires that manufacturers and distributors required to register a warehouse with the commission must provide the warehouse's address and such other information as may be required on a form prescribed by the commission. No warehouse may be operated until the form is received by the commission's licensing division.

The proposed new rule also specifies that each registered warehouse is a place of business of the license holder for purposes of two sections of the commission's rules: §41.23, relating to General Records Required; and §41.25, relating to Records and Invoice Requirements.

Finally, the proposed new rule requires that licensees storing beer or malt beverages in a warehouse must keep a record of the receipt, transfer, and movement of all beer or malt beverages to or from a warehouse in accordance with the invoice and record keeping requirements of subchapter C of the commission's rules, relating to Records and Reports by Licensees and Permittees.

Clark Smith, General Counsel, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on state or local government attributable to the rule.

The proposed new rule will have no fiscal or regulatory impact on rural communities. The effect of the proposed reporting requirements on micro-businesses, small businesses, and persons regulated by the commission will be minimal. The obligation to register beer and, later, malt beverage, warehouses was imposed by the legislature in House Bill 1545. Code §62.08(e), added by that bill, also requires the commission to specify by rule the information that is required to register a warehouse. The proposed new rule merely implements that Code provision and does not itself impose an additional regulatory burden on small businesses, micro-businesses, and persons regulated by the commission.

This paragraph constitutes the commission's government growth impact statement for the proposed new rule. The analysis addresses the first five years the proposed new rule would be in effect. The proposed new rule neither creates nor eliminates a government program. The proposed new rule does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed new rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed new rule does not increase or decrease fees paid to the agency. The proposed new rule creates a new regulation, as that term is defined in 34 Texas Administrative Code §11.1(a). The proposed new rule does not expand, limit, or repeal an existing regulation. The proposed new rule neither increases nor decreases the number of individuals subject to the rule's applicability. The proposed new rule does not have a direct effect on the state's economy, either positively or adversely.

Mr. Smith has determined that for each year of the first five years that the proposed new rule will be in effect, the public will benefit because the commission will have the information available to track the location of alcoholic beverage product, as necessary to protect the public safety and secure compliance with the state's comprehensive regulatory program for alcoholic beverages.

Comments on the proposed new rule may be submitted in writing to Clark Smith, General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the new rule on Tuesday, October 29, 2019, at 1:30 p.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029.

The proposed new rule is authorized by Alcoholic Beverage Code §5.31, which authorizes the agency to prescribe rules necessary to carry out the provisions of the Code, and §62.08(e), which requires the commission to promulgate a rule regarding warehouse registration requirements.

This rule relates to Alcoholic Beverage Code §62.08(e).

§41.57. Warehouse Registration.

(a) This rule implements Alcoholic Beverage Code §62.08(e).

(b) Licensees required by Code §62.08 to register a warehouse with the Commission shall provide the warehouse's address and all other information required on a form prescribed by the Commission. Should any information required by the form change, a licensee is required to submit a new form reflecting those changes within 30 days. A licensee may not operate a warehouse until the registration form is received by the Commission's Licensing Division.

(c) A registered warehouse is a place of business of the license holder for purposes of 16 Texas Administrative Code §41.23 and §41.25.

(d) Licensees storing malt beverages in a warehouse shall make and keep a record of the receipt, transfer, and movement of all malt beverages to or from a warehouse in accordance with the invoice and record keeping requirements of this subchapter.

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

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Clark Smith

General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3367



CHAPTER 45. MARKETING PRACTICES
SUBCHAPTER D. ADVERTISING AND
PROMOTION--ALL BEVERAGES

16 TAC §45.105

The Texas Alcoholic Beverage Commission proposes amendments to §45.105, relating to Advertising. The amendments are proposed to implement Alcoholic Beverage Code §108.52(c).

Section 347 of House Bill 1545, 86th Texas Legislature (Regular Session, 2019) amended Alcoholic Beverage Code §108.52(c)

effective September 1, 2019. As amended, subsection (c) requires the commission to adopt reasonable rules relating to the type of outdoor advertising retail licensees and permittees may erect or maintain on the retailer's premises.

The proposed amendments align outdoor advertising privileges for all retailers by applying standards previously applicable to mixed beverage permittees to all retailers. With a limited exception for retailers who hold food and beverage certificates, the amended rule would provide that holders of retail-tier licenses and permits may not advertise any price for an alcoholic beverage on any sign or other display located on the retailer's premises in such a manner that the price is visible to persons outside of the premises. Retailers, other than mixed beverage permittees, have been prohibited from posting prices under other provisions of the Alcoholic Beverage Code, so the restriction on posting prices in the proposed amendments does not change the status quo for them.

Clark Smith, General Counsel, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the rule.

The proposed amendments will have no fiscal or regulatory impact on rural communities. There will be no effect on micro-businesses, small businesses, and persons regulated by the commission. The proposed amendments do not impose an additional regulatory burden on small businesses, micro-businesses, and persons regulated by the commission.

This paragraph constitutes the commission's government growth impact statement for the proposed amendments. The analysis addresses the first five years the proposed amendments would be in effect. The proposed amendments neither create nor eliminate a government program. The proposed amendments do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed amendments require neither an increase nor a decrease in future legislative appropriations to the commission. The proposed amendments do not increase or decrease fees paid to the agency. The proposed amendments do not create a new regulation. The proposed amendments do not expand, limit, or repeal an existing regulation. Facially, the proposed amendments increase the number of individuals subject to the rule's applicability but the effective regulatory burden on those individuals does not increase, because the rule's price-posting restriction carries forward the same restriction previously imposed upon them by the Alcoholic Beverage Code. The proposed amendments do not have a direct effect on the state's economy, either positively or adversely.

Mr. Smith has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because public safety will continue to be safeguarded from the effects of overconsumption encouraged by lower price postings, especially in congested areas.

Comments on the proposed amendments may be submitted in writing to Clark Smith, General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the amendments on Tuesday, October 29, 2019, at 1:30 p.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin,

Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029.

The proposed amendments are authorized by Alcoholic Beverage Code §5.31, which authorizes the agency to prescribe rules necessary to carry out the provisions of the Code.

This rule relates to Alcoholic Beverage Code §108.51 and §108.52.

§45.105. *Advertising.*

(a) Retailer [~~Mixed Beverage~~] Establishments.

(1) This subsection relates to Alcoholic Beverage Code §§~~108.07~~, 108.51, and 108.52 [~~§108.07~~].

(2) Except as provided in this paragraph, retail-tier license and [~~the holder of any~~] permit holders [~~allowing the sale or service of mixed beverages~~] may not advertise any price for an alcoholic beverage on any sign, billboard, marquee, or other display located on the retailer's [~~licensed~~] premises in such a manner that the price may be read by persons outside of the premises. It is an exception to the restriction in this paragraph if the holder of a food and beverage certificate places a menu on the exterior wall of the premises so that it can be read outside of the premises only by a pedestrian in close proximity to the menu. In order to qualify for the exception granted in this paragraph, the menu visible outside of the premises must be of the same size and in the same sized font as the menu presented to the establishment's customers, and must show both food and beverage prices.

(b) Private Clubs.

(1) This subsection relates to Alcoholic Beverage Code §§32.01(b), 108.51, 108.52 and 108.56.

(2) The holder of a private club registration permit or a private club exemption certificate must, in any advertising either directly or indirectly advertising the service of alcoholic beverages whether or not by any specific brand name, state that the service of alcoholic beverages is only for persons who are members of the club.

(3) The holder of a private club registration permit or a private club exemption certificate may advertise any class of alcoholic beverages in an area where the sale of that class of alcoholic beverages is legal for on-premises consumption, provided no other provisions of the Alcoholic Beverage Code are violated.

(c) Mobile Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§108.51, 108.52 and 108.54.

(2) Mobile advertising on vehicles is not permitted unless it meets the definition of an "electric sign" in Alcoholic Beverage Code §108.51(3).

(3) Mobile advertising that meets the definition of an "electric sign" in Alcoholic Beverage Code §105.51(3) and that is funded directly or indirectly by upper-tier members may not be parked within 200 feet of a retail location for more than one hour, in order to prevent benefit to the retailer by drawing consumer traffic to the location.

(4) Mobile advertising that meets the definition of an "electric sign" in Alcoholic Beverage Code §108.51(3) may not be parked, maintained in, or driven through an area or zone where the sale of alcoholic beverages is prohibited.

(d) Internet Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§102.07, 102.15 and 108.07.

(2) Retailers may advertise on the internet via their website or through third party advertising, unless the advertising is funded directly or indirectly by an upper-tier member.

(3) All retailer advertising on the internet must conform with the on-premises promotion restrictions of §45.103 of this subchapter, coupon and inducement restrictions of §45.101 of this subchapter, and sweepstakes and giveaway restrictions of §45.106 of this subchapter.

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

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Clark Smith

General Counsel

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3367



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 117. MASSAGE THERAPY

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 117, Subchapter A, §117.2; Subchapter C, §§117.20, 117.21, and 117.23; Subchapter D, §117.31; Subchapter E, §117.40; Subchapter F, §§117.50 - 117.55, 117.57 - 117.59, 117.61, 117.62, and 117.64 - 117.68; Subchapter G, §§117.80, 117.82, and 117.83; Subchapter H, §§117.90, 117.91, and 117.93; Subchapter I, §117.100; new rule Subchapter C, §117.25; and the repeal of Subchapter F, §117.56 and §117.60, regarding the Massage Therapy Program. These proposed changes are referred to herein as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 117 implement Texas Occupations Code, Chapter 455, Massage Therapy.

The proposed rules implement necessary changes required by House Bill (HB) 1865 and HB 2747, 86th Legislature, Regular Session (2019).

As required by HB 1865, the proposed rules remove the five-year ban to obtain a license for violations of Chapter 455, Texas Occupations Code; require fingerprint criminal history checks; create a student permit and provides for a fee; and require massage schools report to the Department monthly student progress reports.

As required by HB 2747, the proposed rules prohibit residing on the premises of a licensed massage establishment; require a photograph on the licenses of massage therapists; and require the posting of human trafficking information in massage schools and establishments.

The proposed rules include recommendations from the Massage Therapy Advisory Board (Advisory Board) Standard of Care workgroup to address draping standards and remove

the prohibition on using testimonials in advertisements as addressed in two opinions issued by the Office of the Attorney General (JC-0342 and JC-0458).

The proposed rules also include recommendations from the Advisory Board's Education and Examination workgroup to reduce regulatory burdens and streamline processes and procedures for massage schools to provide more efficiencies and clarity to the industry.

The proposed rules were presented to and discussed by the Advisory Board at its meeting on August 29, 2019. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §117.2, adding a definition for "linens" to provide clarity for health, safety, and sanitation standards for massage schools and establishments and add a definition for "student permit" as created by HB 1865.

The proposed rules amend the title of Subchapter CI adding student permit, as created by HB 1865.

The proposed rules amend §117.20, adding that criminal history background checks must be done in accordance with the Department's criminal conviction guidelines and Chapter 455, Chapter 51, and Chapter 53 of the Texas Occupations Code. The proposed rules establish the fingerprint requirements for criminal history background checks as required by HB 1865 by adding statutory language to the rule.

The proposed rules amend the title of §117.21, replacing the term "reciprocity" with the term "substantial equivalence," which more accurately reflects the process by which the Department evaluates applicants from another state.

The proposed rules amend §117.23, adding the requirement to attach a current photo to an individual massage therapist license as required by HB 2747.

The proposed rules add a new §117.25, outlining the general requirements, application process, and license term for student permits as created by HB 1865.

The proposed rules amend §117.31, updating the list of acceptable entities that provide continuing education courses to include those offered by associations and by approved massage therapy schools, instead of having a separate process for approval of individual advanced course work. This will provide clarity for licensees as to what is acceptable continuing education when taken through an acceptable entity, instead of on a course by course basis.

The proposed rules amend §117.40, making a clerical change by fixing a typo.

The proposed rules amend §117.50, removing regulatory burdens for massage school by streamlining the requirements and application process to require only necessary documentation for proof of ownership or lease agreements and financial stability. The proposed rules add that adequate space and equipment must be provided to students, that schools must comply with health and safety standards, and submit information on the school's designated contact person, if applicable, to the general requirements for an applicant. The proposed rules add requirements for schools when accounting for student hours and the requirement to report on student progress to the Department in accordance with HB 1865. The proposed rules also add that

criminal history background checks must be done in accordance with the Department's criminal conviction guidelines and Chapter 455, Chapter 51, and Chapter 53 of the Texas Occupations Code. The proposed rules establish the fingerprint requirements for criminal history background checks as required by HB 1865 by adding statutory language to rule.

The proposed rules amend §117.51, streamlining the application process for additional massage school locations to match the application process for opening a massage school, clarifying outdated language by properly referencing a massage school and not a massage therapy education program, and adding the current process to change the location of an established massage school to rule.

The proposed rules amend §117.52, clarifying that a massage school must apply for a new massage school license thirty (30) days prior to changing ownership and outlining more clearly what actions may constitute a change of ownership.

The proposed rules amend §117.53, updating outdated language, outlining the process for massage schools using a time clock for tracking student progress and reporting as required by HB 1865, and adding the requirement that a massage school must display a human trafficking sign, as required by statute, that is acceptable to the Department.

The proposed rules amend §117.54, updating the title and including recommendations from the Massage Therapy Advisory Board Education and Examination workgroup to streamline the health and safety requirements for massage schools and provide licensees with more clarity. These changes include removing outdated requirements, using more appropriate terminology, and combining redundant provisions.

The proposed rules amend §117.55, updating inspection requirements to ensure student records are properly maintained because of the creation of a student permit in HB 1865 and providing more details on the process for corrective modifications after school inspections for clarity.

The proposed rules repeal §117.56, removing an overly burdensome process from rule and the requirement for financial stability has been simplified and moved to the general requirements for applicants for massage schools.

The proposed rules amend §117.57, adding that criminal history background checks must be done in accordance with the Department's criminal conviction guidelines and Chapter 455, Chapter 51, and Chapter 53 of the Texas Occupations Code. The proposed rules also update outdated language for clarity and add that notices may be emailed.

The proposed rules amend §117.58, streamlining the rules to use one term for the massage schools contact person.

The proposed rules amend §117.59, updating outdated language, making clerical changes, and removing the hours cap and approval process for courses and internships. Chapter 455, Texas Occupations Code, provides that the Department shall issue a license to an applicant that presents evidence satisfactory to the Department that they have completed massage therapy studies in a 500-hour minimum course. There is no statutory requirement that the course or internship be capped or separately approved.

The proposed rules repeal §117.60, removing a regulatory burden for schools approved to be course providers and will no longer require additional approval of specific courses.

The proposed rules amend §117.61, removing the burden of submitting copies of admission requirements to the Department and clarifying the process for transcript review.

The proposed rules amend §117.62, removing the requirement that enrollment information include information about being ineligible for a license until the fifth anniversary of the date of conviction for a violation of the Act as removed by HB 1865, updating out of date terminology, and adding requirements for student permits created by HB 1865.

The proposed rules amend §117.64, updating out of date language, adding procedures for schools to report progress to the Department that use time clocks, and removing redundant student registry requirements due to the creation of student permits and reporting requirements as required by HB 1865.

The proposed rules amend §117.65, rewording the section for clarity.

The proposed rules amend §117.66, updating the massage school refund language to reflect current language and process used to determine and calculate refunds.

The proposed rules amend §117.67, outlining the process for reporting of student progress to the Department as required by HB 1865.

The proposed rules amend §117.68, removing a requirement for termination of students based on absences that is outdated and confusing and updating the language of the rule.

The proposed rules amend §117.80, adding that criminal history background checks must be done in accordance with the Department's criminal conviction guidelines and Chapter 455, Chapter 51, and Chapter 53 of the Texas Occupations Code. The proposed rule amendment establishes the fingerprint requirements for criminal history background checks, as required by HB 1865, by adding statutory language to rule.

The proposed rules amend §117.82, adding the requirement for massage establishments to post a sign with human trafficking information and prohibiting residing on the premises of massage establishments as required by HB 2747.

The proposed rules amend §117.83, streamlining sanitation requirements for massage establishments by removing outdated requirements, using more appropriate terminology, and combining redundant provisions.

The proposed rules amend §117.90, adding required draping standards.

The proposed rules amend §117.91, adding information on draping standards to the requirements for the consultation document.

The proposed rules amend §117.93, removing the prohibition on testimonials being used in advertisements in response to two Office of the Attorney General opinions.

The proposed rules amend §117.100, adding the fee for student permits, as created by HB 1865, and updating language for clarity.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

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

The proposed rules are necessary to implement changes made by House Bill (HB) 1865 and HB 2747, 86th Legislature, Regular Session (2019). These statutory changes requiring a massage student to obtain a permit and a massage school to maintain monthly student progress reports will require the Department to update its current licensing database system and build an on-line portal which will allow the schools to submit that progress, course completion, and exam eligibility to the Department on-line. However, the Department will replicate the portal which currently exists for similar reporting requirements in the barbering and cosmetology programs and will build that replica with existing resources.

HB 2747 requires massage establishments and schools to post signs concerning services and assistance available to victims of human trafficking and for the signs to be in multiple languages. In order to alleviate the cost to establishments and schools, the Department will develop and provide the required sign free of charge in both a downloadable and printable format in multiple languages.

Although the Department will issue approximately 2,400 student permits each year, these permits have no requirements which must be reviewed, other than enrollment in a massage school. The Department will not need additional personnel or resources to issue the student permits.

It is estimated that the remaining statutory requirements will result in minimal costs, if any, to the state. The activities required to implement the proposed rule changes are one-time program administration tasks that are routine in nature, such as modifying or revising forms, publications, or website information. There will be no additional estimated costs because of the changes to the listed responsibilities for licensees, the code of ethics, the consultation document, and the repeal of the prohibition of a testimonial in advertising.

There is no anticipated reduction in costs to the state. A reduction in costs only results when duties and functions are removed from the Department by the rules. The only requirement proposed to be removed from the rules which could cause a reduction in costs is the removal of the five-year ineligibility for licensure of a person who has been convicted of a violation of the statute. However, not enough of these license denials occur each year to result in a reduction in workload.

Local government does not regulate state licensure of massage therapy. Some local governments do have local ordinances that require certain businesses to obtain a permit to operate, and that may include businesses that provide massage therapy services. However, there would be no additional costs or reductions for local government.

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

A loss in revenue only results when fees paid to the Department are removed by the rules. No fees are removed by the proposed rules. There is no anticipated revenue loss to local governments because fees associated with the program are remitted to the state and not to local governments. Additionally, for each of the first five years the proposed rules are in effect, there is no estimated increase in revenue to local governments.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there will be an estimated increase of revenue to the state as a result of the statutory changes made by HB 1865. There will be an increase in revenue to the state because of the fees collected from student permit applications. There has been an average of 2,345 initial massage therapist licenses issued each year over the past five years and it can be assumed a similar number of students will enter massage schools each year. Applicants for student permits will pay a \$25 application fee. Assuming the number of applicants for student permits each year will be close to the number of applicants for an initial massage therapy license each year, the annual revenue increase in the first year will be approximately \$35,000, adjusted to account for the June 1, 2020 start date for students to hold permits, and subsequently approximately \$58,625 per year.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022. The Massage Therapy Program regulates individuals and businesses who provide massage therapy services and training across the state. The proposed rules would not change the number of individuals who would seek a license or would be licensed to perform massage therapy or change the number of licensees who would perform services for the public, and therefore would have no anticipated impact on local employment.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be through more effective regulation of the massage therapy industry and profession. Future applicants and current licensees will be required to submit fingerprints to undergo a criminal history background check through the Department of Public Safety and the Federal Bureau of Investigation. Fingerprints background checks will allow for a more certain and detailed criminal history background check and will mean the public will know that the licensee performing their services have not been convicted of dangerous crimes.

Creation of the student permit will allow the Department to know who is enrolled in massage schools, receiving massage therapy education, and track the progress of each student. This will also provide an avenue for the Department to ensure that massage schools are not selling hours to students for licenses.

Requiring draping at all times would protect a client's safety, provide comfort and maintain privacy, and requiring statements about draping in the consultation document would allow a potential client to know that draping is required at all times.

The proposed removal of the rule prohibiting testimonials in advertising would allow providers to enhance their advertising, thereby possibly increasing business and revenue, and would provide the public more information about a massage establishment and/or therapist to aid in the selection a licensed establishment and/or therapist.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be additional one-time costs to persons who are required to comply with the proposed rules. The implementation of HB 1865 will have a

one-time cost of \$39 for individuals applying for an initial or renewal massage therapist, massage establishment, or massage school license to submit a set of fingerprints to the Department of Public Safety and for that Department to conduct a state and federal criminal history background check.

Individuals enrolling in a massage school will pay an application fee of \$25 to obtain a student permit.

Massage establishments will be required to display a sign concerning services and assistance available to victims of human trafficking. The Department will provide the required sign free of charge in both a downloadable and printable format in multiple languages, so there will be no cost to establishments.

All therapist licenses and student permits will be required to have a current photograph of the therapist attached to the license, or of the student attached to the permit. The cost to accomplish this will be de minimis or none.

All massage schools will be required to report student progress to the Department. Schools may use a time clock to track progress or records of attendance. Schools that do not possess a time clock are not required to purchase one.

All massage schools will be required to maintain an album or database that contains the student permit and a photograph of each student. The cost to accomplish this will be de minimis or none.

Costs for licensees because of the change in draping requirements and consultation document content are expected to be negligible, if any. Sheets or towels are already provided to clients in massage establishments and other locations where massage services take place. The therapist must simply ensure the towel or sheet drapes the required areas at all times. Consultation documents are usually printed at the time services are being discussed and agreed upon. Any establishments which use pre-printed consultation documents will be allowed to attach an addendum or notate on the document in some manner the newly-required language. Establishments which use pre-printed consultation documents will be allowed to use those documents until they have all been used.

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

There will be no adverse effect on rural communities as a result of the proposed rules. However, there will be an adverse effect on small businesses or micro-businesses as a result of the proposed rules. Since the agency has determined that the proposed rule will have an adverse economic effect on small businesses or micro-businesses, the agency has prepared an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed and required under Texas Government Code §2006.002.

Economic Impact Statement:

There are 29,607 massage therapists, 2,434 massage establishments, 1,380 massage therapy instructors, and 72 massage schools, including 7 branch locations. Although the Department does not track how many of these license holders are small or micro-businesses, it is estimated that most of them are either a small or micro-business.

The Department licenses businesses that provide massage therapy education or services and training and could qualify as a micro-business or a small business. However, the Department is unable to project the number of massage therapist, massage establishment and massage school license holders who would

qualify as small businesses or micro-businesses. The proposed rule will require a therapist and an owner or owners of a massage establishment or school to submit fingerprints for a criminal history background check in order to be licensed. The cost for the fingerprinting process and background check is \$39. Although this will be a cost to small and micro-businesses, this cost is a result of the statutory requirement created by HB 1865. All fingerprint criminal history background checks are submitted to and conducted by the Department of Public Safety (DPS), and DPS determines the method and cost for the submission of the fingerprints. No alternative method or cost is available for small and micro-businesses to comply with the statute.

The fee for the submission of the fingerprints and the background check is a one-time fee and license holders will not have to pay for another background check during license renewals.

Regulatory Flexibility Analysis:

There are no alternative methods of accomplishing the objective of the proposed rule requiring the submission of fingerprints to DPS and the payment of the accompanying fee. The Massage Therapy statute and HB 1865 require all current and future applicants for a massage therapy license to submit fingerprints to DPS for a background check, and pay the fee determined by DPS. TDLR is unable to consider any alternative methods of achieving the purpose of the rule or statute or proposing methods of reducing the adverse impact of a proposed rule.

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

The proposed rules do have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government; however, the proposed rules fall under the exception for rules that are necessary to implement legislation under §2001.0045(c)(9). Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do require an increase or decrease in fees paid to the agency due to the creation of student permits by HB 1865. There will be an increase in fees paid to the Department through the student permit application fee.
5. The proposed rules do create a new regulation. The implementation of HB 1865 and HB 2747 will create new regulation requiring an individual enrolled in a massage school on or after June 1, 2020 to hold a student permit; requiring each applicant for a massage therapist, massage establishment, and massage school license to submit a complete and legible set of fingerprints; requiring a massage school to maintain monthly student

progress reports and submit to the Department either an electronic record of each student's accrued clock hours, or the data in an alternate manner, and to notify the Department when a student is eligible to take the licensure examination; prohibiting an individual from residing on the premises of a massage establishment; requiring licensed massage therapists to attach their photographs to their licenses and students to attach their photographs to their permits; and requires a massage establishment and massage school to display a sign concerning services and assistance available to victims of human trafficking. The proposed rules will also require draping of certain body areas at all times during services and will require the consultation document to contain statements about the requirements for draping.

6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules repeal the regulation which makes persons who have been convicted of a violation of the massage therapy statute ineligible for licensure until the fifth anniversary of the conviction. The proposed rules repeal the requirement for a massage school to request and receive approval from the Department prior to offering a massage therapy education course of instruction which exceeds the 500-hour minimum required for licensure. The proposed rule also repeals requirements for massage school advanced course work approval. The proposed rules repeal the requirement for a school to terminate a student who accumulates absences more than 15% of total clock hours in a program, or 15% of a portion of the program, and repeal the prohibition that a student who is terminated for violation of the attendance policy from reentering the school before the start of the next grading period. The proposed rules repeal the prohibition of testimonials in advertising.

7. The proposed rules do increase or decrease the number of individuals subject to the rule's applicability. HB 1865 requires individuals who are enrolled in a massage school on or after June 1, 2020 to obtain a Department issued student permit.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §117.2

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters

and any other law establishing a program regulated by the Department.

The proposed rules are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.2. Definitions.

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

(1) - (14) (No change.)

(15) Linens--Includes, but is not limited to, sheets, towels, and robes or cloth materials used on or comes into contact with a client's body during a massage.

(16) [~~15~~] Message school--An entity that:

(A) teaches at a minimum the course of instruction required for a massage therapist license; and

(B) has at least two instructors.

(17) [~~16~~] Message therapist--A person who practices or administers massage therapy or other massage services to a client for compensation. The term includes a licensed massage therapist, therapeutic massage practitioner, massage technician, masseur, masseuse, myotherapist, body massager, body rubber, or any derivation of those titles.

(18) [~~17~~] Message therapy--The manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage. The term includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. Massage therapy may include the use of oil, lubricant, salt glows, heat lamps, hot and cold packs, or tub, shower, jacuzzi, sauna, steam or cabinet baths. Equivalent terms for massage therapy are massage, therapeutic massage, massage technology, myo-therapy, body massage, body rub, or any derivation of those terms. Massage therapy is a health care service when the massage is for therapeutic purposes. The terms "therapy" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law. Massage therapy does not constitute the practice of chiropractic.

(19) [~~18~~] Message therapy educational program--The minimum 500 hour supervised course of instruction described in the Act, §455.156, required for licensure and provided by a licensed massage school.

(20) [~~19~~] Message therapy establishment--A place of business that advertises or offers massage therapy or other massage services unless specifically exempted by the Act. The term includes a place of business that advertises or offers any service described by a derivation of the terms "massage therapy" or "other massage services" as defined by the Act.

(21) [~~20~~] Message therapy instructor--A licensed massage therapist who provides to one or more students instruction approved by the department in massage therapy or manipulation of

soft tissue and who holds a license issued by the department as a massage therapy instructor.

(22) [(21)] Owner--An owner is, in the case of a massage school or establishment, an individual, a partnership and any partners, a corporation, or any other legal business entity.

(23) [(22)] Pathology--The scientific study of the nature of disease and its causes, processes, development, and consequences.

(24) [(23)] Physiology--The study of the normal vital processes of the human body including the processes of cells, tissues, and organs including the contractibility of muscle tissue; coordination through the nervous system; digestion; circulatory; reproduction; and secretions.

(25) [(24)] State approved educational institution--An institution which is approved by the Texas Education Agency or which is an institution of higher education as defined in the Texas Codes Annotated, Texas Education Code, Chapter 61 or a higher education institution approved by a similar agency in another state.

(26) Student permit--A permit issued by the department to a student enrolled in a licensed massage school which allows the student to practice massage therapy as prescribed by the massage therapy education program.

(27) [(25)] Swedish gymnastics--Passive and active joint movements, nonspecific stretches, passive and active exercise, or any combination of these.

(28) [(26)] Swedish massage therapy techniques--The manipulation of soft tissue utilizing effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve stroke, and Swedish gymnastics.

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 September 30, 2019.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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



SUBCHAPTER C. LICENSED MASSAGE THERAPIST AND STUDENT PERMIT

16 TAC §§117.20, 117.21, 117.23, 117.25

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The proposed rules are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an

applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.20. Massage Therapist License--General Requirements and Application.

(a) To be eligible for a Massage Therapist license an applicant must:

(1) - (6) (No change.)

(7) successfully pass a criminal history background check performed by the department in accordance with the Act, the department's criminal conviction guidelines, and pursuant to Texas Occupations Code, Chapters 51 and 53; and

(8) (No change.)

(b) - (d) (No change.)

(e) A criminal history check performed under this subsection requires an applicant for a license to submit a complete and legible set of fingerprints, on a form prescribed by the department, to the department 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) The department may not issue a license to a person who does not comply with the requirements of this section.

(g) The department shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

§117.21. Massage Therapist License--Substantial Equivalence[Reciprocity].

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

§117.23. Massage Therapist License--Issuance of License.

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

(d) A license displayed under subsection (b) must have attached to the front of the license a current photograph of the individual massage therapist.

§117.25. Student Permit--General Requirements and Application; Term.

(a) To be eligible for a student permit an applicant must:

(1) submit a completed application on a department-approved form; and

(2) submit all applicable fees as prescribed under §117.100.

(b) A student permit issued under this chapter does not expire.

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

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SUBCHAPTER D. CONTINUING EDUCATION

16 TAC §117.31

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The proposed rules are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.31. Massage Therapist--Approved Continuing Education Courses and Providers.

(a) Acceptable continuing education includes attendance at and completion of department approved or recognized, institutes, seminars, workshops, state or national conferences, associations, courses provided by an approved massage therapy school, [advanced course work,] or college and university academic courses that are:

(1) - (4) (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.

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SUBCHAPTER E. LICENSED MASSAGE THERAPY INSTRUCTORS

16 TAC §117.40

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, which authorize the Texas Commission of Licensing and Regulation, the Department's governing

body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The proposed rules are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.40. Massage Therapy Instructor--General Requirements and Application.

(a) (No change.)

(b) To qualify for massage therapy instructor license, a person shall:

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

(6) pay the required fee [fee] under §117.100; and

(7) successfully pass a criminal history background check performed by the department.

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

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

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-8179



SUBCHAPTER F. LICENSED MASSAGE SCHOOLS

16 TAC §§117.50 - 117.55, 117.57 - 117.59, 117.61, 117.62, 117.64 - 117.68

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The proposed rules are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No

other statutes, articles, or codes are affected by the proposed rules.

§117.50. Massage School License--General Requirements and Application.

(a) (No change.)

~~[(b) Minimum standards of operation must be maintained by all massage therapy educational programs to ensure educational programs of high quality which will be of benefit to the student, the school, and the public.]~~

~~(b) [(e)] To be eligible for a massage school license, an applicant must: [Each applicant for a massage school must:]~~

~~(1) submit a completed application on a department-approved form;~~

~~(2) submit proof of ownership of the building or a lease agreement for the first twelve (12) months of operation; [supporting documents that shall include:]~~

~~[(A) lease agreement;]~~

~~[(B) detailed floor plan; and]~~

~~[(C) inventory;]~~

~~(3) provide a current financial statement reviewed by a public accountant and finalized no more than 180 days prior to the application date [the financial stability statements or documents as prescribed under §117.56];~~

~~(4) pay the required fee under §117.100; [and]~~

~~(5) successfully pass a criminal history background check performed by the department in accordance with the Act, the department's criminal conviction guidelines, and pursuant to Texas Occupations Code, Chapters 51 and 53;[-]~~

~~(6) maintain adequate space and equipment to provide training to enrolled students;~~

~~(7) comply with all health and safety standards established by the Act and this chapter; and~~

~~(8) submit the name and contact information for the school's designated contact person, if applicable.~~

~~(c) A massage school must be inspected and approved by the department prior to operation.~~

~~(d) The department shall conduct an inspection of a massage school before an educational program begins operation. No massage school may be operated, instruction given, or student solicited or enrolled at any location which has not been approved by the department.]~~

~~[(e) Each massage school shall maintain each instructional location in accordance with applicable state and local fire codes and regulations.]~~

~~(d) [(f)] The massage school license must be displayed in an appropriate and public manner at the location of the educational program.~~

~~(e) A massage school must properly account for the hours granted to each student, in a manner prescribed by the department.~~

~~(f) A school shall not engage in any act, directly or indirectly, that grants or approves student hours that were not accrued in accordance with this chapter.~~

~~(g) A criminal history check performed under this subsection requires an applicant for a license to submit a complete and legible set of fingerprints, on a form prescribed by the department, to the depart-~~

ment 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.

(h) The department may not issue a license to a person who does not comply with the requirements of this section.

(i) The department shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(j) For purposes of this section, if the applicant for a license is an entity, the applicant must submit fingerprints as required by this section for each individual who:

(1) personally or constructively holds, including as the beneficiary of a trust:

(A) at least 10 percent of the entity's outstanding stock;

or

(B) more than \$25,000 of the fair market value of the

entity;

(2) has the controlling interest in the entity;

(3) has a direct or indirect participating interest through shares, stock, or otherwise, regardless of whether voting rights are included, of more than 10 percent of the profits, proceeds, or capital gains of the entity;

(4) is a member of the board of directors or other governing body of the entity; or

(5) serves as:

(A) an elected officer of the entity; or

(B) a general manager of the entity.

§117.51. Massage School Locations.

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

(c) An application for licensure of an additional location must be in accordance with the requirements of §117.50 and include the [shall include the department-approved application form,] fee prescribed under §117.100,[-] and the following documents:

~~[(1) lease agreement;]~~

~~[(2) detailed floor plan; and]~~

~~[(3) inventory.]~~

~~[(d) Each massage school shall maintain each instructional location in accordance with applicable state and local fire code(s) and regulations.]~~

~~(d) [(e)] The department may approve a massage school [therapy educational program] to begin operation at an additional location prior to inspection if an inspection of the location has been conducted by the department within the preceding ninety (90) days or if the instruction will be conducted at a public facility, such as a hotel, hospital, university, college, etc.~~

~~(e) [(f)] An application for a change of [instructional] location of a massage school [therapy educational program] must be filed and approved by the department before the new location is used. Upon approval of a change of [instructional] location, no course work may be provided at the previous location.~~

(f) An applicant for a change of location must:

(1) submit a completed application on a department-approved form;

(2) pay the applicable fee under §117.100;

(3) provide proof of ownership of the building or a lease agreement for the first twelve (12) months of operation;

(4) maintain adequate space and equipment to provide training to enrolled students;

(5) comply with all health and safety standards established by this chapter; and

(6) be inspected and approved by the department prior to the operation of the school at the new location.

(g) Any refunds due to students under the cancellation and refund policy in §117.66, must be made before the department will approve an additional location or a change of location.

(h) The department may issue an emergency approval for a change of ~~[instructional]~~ location or additional location on the basis of documented circumstances beyond the massage school's ~~[therapy educational program's]~~ control (e.g., fire, flood, breach of lease, etc.).

(i) [(+) All required documents must be submitted before the emergency approval will be considered.

~~[(2) All required fees for the change of location or approval of additional location must be submitted to the department within ten (10) days of issuance of the emergency approval unless the new location is only used once.]~~

§117.52. Change of Massage School Ownership.

(a) The license of a massage school may not be sold or transferred to another person or owner.

(b) If a massage school changes ownership, the new owner must apply for a new massage school license within thirty (30) days before the change in ownership. A massage school may continue to operate pending approval by the department. The new owner must submit a massage school application for a new license meeting all requirements as defined in §117.50.

(c) A change of ownership may include the following:

(1) For a sole proprietorship, the licensee no longer owns the massage school.

(2) For a partnership or limited partnership, the partnership is dissolved.

(3) For a corporation or limited liability company, if sold to another person or entity. A change of ownership does not include corporate officer or stockholder restructuring.

(4) The addition or deletion of any person defined as an owner.

(5) Legal incompetence or death.

~~[(b) The department may consider the addition or deletion of any person defined as an owner as a change in ownership.]~~

~~[(e) The massage school must notify the department of the change in ownership at least thirty (30) days before the change in ownership to request that the department, in lieu of a full application, accept a partial application. All fees for initial application will apply.]~~

~~[(d) The department may require submission of a complete application for licensure if:]~~

~~[(1) the department has a reasonable basis to believe the change in ownership of the school may significantly affect the massage therapy educational program's continued ability to meet the criteria for approval; or]~~

~~[(2) the educational program fails to file notice of the change of ownership at least thirty (30) days before the ownership transfer.]~~

~~[(e) The department may require a partial application for licensure if the department reasonably believes the change in ownership will not significantly affect the educational program's continued ability to meet the criteria for approval.]~~

~~[(f) Before a change in ownership of a massage school, the purchaser shall furnish the department with appropriate information to establish financial stability as prescribed under §117.56.]~~

~~(d) [(g)] The new owner [purchaser] of a massage school shall accept responsibility for all refund liabilities of the previous owner.~~

~~[(h) The department may issue a new license, resulting from a change of ownership, without conducting an inspection if an inspection of the facility has been conducted within the previous year and if the new owner verifies that no changes will be made to existing facilities.]~~

§117.53. Massage School Equipment and Facility Requirements.

(a) Each massage school ~~[therapy education program]~~ shall provide adequate equipment in good working order. The equipment required for instruction shall be determined by the program objective(s). The equipment shall be comparable to that commonly found in the practice of massage therapy.

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

(d) The facilities shall meet any state and local ordinances or requirements governing building and safety for the designated use, including applicable state and local fire codes.

(e) If adequate facilities and equipment are available, the following maximum ratios are recommended for the supervised course of instruction, and may be varied at the discretion of the massage school ~~[therapy educational program]~~ to conform to specific conditions:

(1) laboratory--12 tables to 1 instructor and 3 students to 1 table; and

(2) classroom--36 students to 1 instructor.

(f) If a massage school is using a time clock to track student hours, the computer time clock must indicate the specific date of each day.

(g) A massage school shall display the massage school license in a conspicuous place for public view.

(h) A massage school must display a sign containing human trafficking information as required by Texas Occupations Code, Chapter 455, §455.207, in a form and manner prescribed by the commission that is:

(1) in a conspicuous place clearly visible to the public; and

(2) acceptable to the department.

§117.54. Massage School Health and Safety [Sanitation] Requirements.

(a) Each massage school ~~[instructional location]~~ shall be maintained in accordance with applicable state and local ~~[sanitary or]~~ health and safety codes and regulations.

(b) A massage school [An instructional location] and all fixed equipment shall be:

- (1) thoroughly cleaned on a routine basis;
- (2) [be] rendered free from harmful organisms by the application of an accepted bactericidal agent;[; and]
- (3) [be] in good working condition at all times; and[;]
- (4) adequately ventilated.

(c) Toilet facilities shall be kept clean and sanitary [without offensive odor and in working order] at all times. Restrooms shall not be used as storage rooms.

(d) Each massage school [location] shall provide hand washing facilities, including hot and cold running water, located near or adjacent to the toilet room or rooms. [Hot air blowers or suitable holders for sanitary towels and dispensers for soap shall be provided, and be adequately supplied at all times.]

(e) All trash containers must be emptied daily and kept clean [by washing or using plastic liners].

(f) Disposable sheets, towels, or protectors which cannot be disinfected must [will] be disposed of in a waste receptacle immediately after use.

(g) (No change.)

(h) Clean linens [sheets] shall be used on each client.

(i) [~~Soiled sheets are to be discarded.~~] After linens have [a sheet has] been used once, they must [it shall] be deposited in a partially closed or fully closed [receptacle,] container[; or basket,] and shall not be used again until properly laundered and disinfected in chlorinated bleach and hot water.

~~[(j) Used towels shall be laundered in chlorinated hot water either by regular commercial laundering or by a non-commercial laundering process].~~

~~[(k) Lubricants, including oils, [Oil] must be kept in closed containers.~~

~~[(l) Each instructional site must have adequate ventilation.]~~

§117.55. *Massage School Inspections.*

(a) There will be at least one unannounced inspection at the primary instructional location of each massage school and at each additional location every year. The massage school owner or the designated contact person must be available.

(b) Other inspections may be performed, announced or unannounced, at the discretion of the department to ensure compliance.

(c) A school must maintain and make available for department or student inspection the following documents for a period of the student's enrollment through thirty-six (36) months after the student completes the curriculum, withdraws, or is terminated:

- (1) daily record of attendance;
- (2) the following documents if a time clock is used:
 - (A) time clock record(s); and
 - (B) time clock failure and repair record(s); and

(3) all other relevant documents that account for a student's hours under this chapter.

~~[(e) If deficiencies are found, the massage school shall be notified at the end of the inspection of the deficiencies in writing. If deficiencies are not serious or do not raise health and safety concerns, the department shall give the educational program thirty (30) days to correct the deficiencies.]~~

(d) Upon completion of the inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the inspection was approved or not approved and will describe any violations identified during the inspection. For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner of the school within ten (10) days. Verification of corrected violations must be provided, in a manner prescribed by the department, within thirty (30) days of completion.

§117.57. *Massage School License Renewal.*

(a) (No change.)

(b) To renew a massage school license, the licensee must submit:

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

(3) successfully pass a criminal history background check performed by the department in accordance with the Act, the department's criminal conviction guidelines, and pursuant to Texas Occupations Code, Chapters 51 and 53 [the complete annual financial statements for the most recently completed fiscal year, demonstrating the massage therapy educational program is financially stable and capable of fulfilling its commitments for instruction]; and

(4) (No change.)

(c) At least thirty (30) days before the license expiration date, the department shall send a notice of the expiration date and the amount of the renewal fee due. The notice will be mailed or emailed to the address in the department's records. Each massage school must file a renewal form in a manner prescribed by the department.

(d) The department shall renew [issue a renewal license to] a massage school license once all renewal requirements are met.

(e) A massage school which operates [a massage therapy educational program] with an expired license may be subject to disciplinary action. Course hours taught during the time the license is expired will not apply toward the minimum 500-hour course of instruction. For the purpose of establishing the date of late renewal, the postmark date shall be considered the date of mailing.

§117.58. *Massage School Administrative Personnel.*

(a) Each massage school that operates a massage therapy educational program shall notify the department of the designated contact person. The designated contact person [name of the person designated as the director of the educational program. The director] is responsible for the educational program, the organization of classes, the maintenance of the physical location and the instructional site(s), the maintenance of proper administrative records and all other procedures related to the administration of the educational program.

~~[(b) The director shall designate an individual to perform all the functions of, and succeed to, the authority of the named director when the director is unavailable or absent from the educational program. The director shall notify the department of the name of the designated individual.]~~

(b) ~~[(c)]~~ The owner or designated contact person [director or his or her designee] must be available during scheduled inspections by the department.

§117.59. *Massage School Curriculum Outline and Internship.*

(a) Each massage school [that operates a massage therapy educational program] shall follow the curriculum outline prescribed by the department for the minimum 500-hour supervised course of instruction.

(b) (No change.)

(c) A classroom hour shall include at least 50 clock minutes of actual classroom time and may include a maximum of 10 minutes of break time. Break time for hours which are taught consecutively in one sitting (i.e., in one evening) may be aggregated into a single break time during those consecutive hours, not to exceed 3-hour [3 hour] blocks of instruction, but not at the end of those hours. The 10 minutes of break time may not be accumulated and used in lieu of lunch or dinner breaks.

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

(f) During the hands-on experience, a massage therapy instructor must be available on the premises of the massage school [educational program] and be immediately available to the student(s).

(g) A massage school shall not require a student to advertise for clients or to obtain clients as part of the internship program. At the student's option and with the massage school's [educational program's] permission, a student may obtain clients for the student's hands-on massage therapy experience.

(h) - (i) (No change.)

(j) [Approved internship programs may not exceed 120 hours.] Individuals who have completed the required minimum 500-hour supervised course of instruction, including the 50-hour internship, are eligible for examination and licensure. [For the purposes of Texas Occupations Code, §455.053(7), 50 hours is the maximum number of hours a student can accumulate in an internship before the student is required to be licensed unless the student is enrolled in a massage school with an internship of up to 120 hours which has been approved by the department in accordance with subsection (m) of this section. No student may complete more than one internship program.]

(k) A massage school shall not allow a [an unlicensed] student to receive any form of compensation for massage therapy or other massage therapy services.

(l) A massage school shall not allow, authorize, or contract with a [an unlicensed] student enrolled in any course or portion of a course offered by the school to provide massage therapy or other massage therapy services to the public for compensation in excess of the internship [approved by the department].

~~[(m) A massage school shall request and receive approval to offer a course of instruction designed as a massage therapy educational program which exceeds the 500-hour minimum required for licensure and is otherwise conducted in accordance with all rules pertaining to a massage therapy educational program. A massage school shall not offer a massage therapy educational program which exceeds the 500-hour minimum required for licensure without receiving approval in writing from the department. Such approval shall only be granted by the department if:]~~

~~[(1) the massage school is accredited by an accrediting body approved by the U.S. Department of Education; or]~~

~~[(2) the massage school is approved by the department and meets the following requirements:]~~

~~[(A) the massage school also offers the 500-hour minimum course of instruction required for licensure concurrently and the student is allowed to choose whether or not to enroll in a program that exceeds the minimum number of hours required for licensure;]~~

~~[(B) the massage therapy educational program shall follow the curriculum outline prescribed by the department for the minimum 500 hour supervised course of instruction;]~~

~~[(C) all classroom hours in excess of 450 hours are structured to achieve specific educational goals approved by the department which are directly related to one or more of the competencies included in the curriculum approved by the department;]~~

~~[(D) all internship hours in excess of 50 hours are structured to achieve specific educational goals approved by the department which are directly related to the clinical application of theory pertaining to the practice of massage therapy and the manipulation of soft tissue;]~~

~~[(E) the total number of classroom hours does not exceed 880 hours;]~~

~~[(F) the total number of internship hours does not exceed 120 hours;]~~

~~[(G) the massage school;]~~

~~[(i) provides the student with a department form designed to inform the student that the massage therapy educational program exceeds the minimum number of hours required by law for licensure;]~~

~~[(ii) obtains the student's signature on the form before enrollment;]~~

~~[(iii) provides a copy of the signed form to the student; and]~~

~~[(iv) maintains a copy of the signed form in the student's file; and]~~

~~[(H) Failure to comply with this subchapter shall constitute grounds for the department to deny or withdraw approval of programs or to take disciplinary action against a massage school.]~~

§117.61. Massage School Admission Requirements.

(a) Each massage school shall develop and maintain [submit a copy of its] admission requirements [for the department's approval. Justification shall be submitted for each of the admission requirements].

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

(d) Official transcripts and documentation of course work obtained at colleges, universities, or out of state institutions must be submitted for evaluation on a department-approved form. The department will provide the student with the allowed approved credit which the student must provide to the massage school. The massage school must place [placed] in the student's file [along with] a copy of the department's [written] evaluation.

(e) (No change.)

§117.62. Massage School Enrollment Procedures.

(a) Before enrollment, each massage school shall provide each prospective student with the following:

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

(16) a statement that the Act sets out that a person is ineligible for licensure[;]

~~[(A) if the person has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication to crimes or offenses under Chapter 20A, Penal Code, or Subchapter A, Chapter 43, Penal Code, or another sexual offense;] or]~~

~~[(B) until the fifth anniversary of the date of a conviction of a violation of the Act.]~~

(b) Each prospective student shall be given a reasonable time to review the material in subsection (a) and offered the opportunity to

tour the instructional facility and inspect equipment before signing an enrollment agreement. ~~[The prospective student may decline the tour.]~~

(c) (No change.)

(d) Each massage school ~~[therapy educational program]~~ shall develop an enrollment agreement which shall be used to enroll each student. The agreement shall include but is not limited to:

(1) the full and correct name and location of the massage school ~~[, massage therapy educational program,] and the massage school director(s) and owner(s);~~

(2) - (6) (No change.)

(e) (No change.)

(f) Each massage school must maintain an album or database that contains each student permit, including a picture of each enrolled student.

(g) Each student enrolled in a massage school must have a student permit. No student may accrue hours without a student permit subject to department approval. No student permit is valid unless the student's photo is included.

§117.64. *Massage School Transcripts and Records.*

(a) Massage schools shall make available for inspection by the department, all records relating to the massage school ~~[therapy educational program]~~ and necessary data required for approval and to show compliance with the Act and this subchapter. A copy of the accreditation authorization and the letter of eligibility from the U.S. Department of Education shall be available for review, if applicable.

(b) A massage school may use a time clock to track student hours and maintain a daily record of attendance.

(c) A massage school using a time clock shall post a sign at the time clock that state the following department requirements:

(1) Each student must personally clock in or out on their own;

(2) No credit shall be given for any times written in, except in a documented case of time clock failure or any other situation which is documented by a licensed instructor;

(3) If a student is in or out of the massage school for lunch, the student must clock out;

(4) Students leaving the massage school for any reason, including smoking breaks, must clock out, except when an instructional area, on a campus, is located outside the main school building and students are under the supervision of a licensed instructor.

(d) ~~[(b)]~~ Each massage school shall maintain student transcripts of academic records permanently. Original or certified copies of transcripts (official transcripts) shall be available to students and any person authorized by the student at a reasonable charge if the student has fulfilled the financial obligation to the school. Transcripts must be made available to students who have satisfied the terms of the enrollment agreement within ten (10) calendar days of the date the terms are satisfied. The transcript of a student shall include the following:

- (1) name and license number of massage therapy educational program;
- (2) the name of the student;
- (3) student's social security number;
- (4) student's date of birth;

(5) inclusive dates of attendance;

(6) list of subjects and number of course hours taken by the student at the massage school ~~[therapy educational program];~~

(7) dates of courses;

(8) address of student;

(9) signature of the school owner or designated contact person ~~[authorized representative of the massage therapy educational program]; and~~

(10) pass/fail score.

(e) ~~[(e)]~~ Each massage school ~~[therapy educational program]~~ shall retain the following student records for at least three years:

(1) enrollment agreements and contracts;

(2) written record and evaluation of previous education and training on a form provided by the department; and

(3) official transcript(s) from all previous post-secondary schools attended by the student.~~[; and]~~

~~[(4) a master student registration list of any person who signs an enrollment agreement, makes a down payment to attend the class, or attends a class. The list must contain:]~~

~~[(A) the date of the entry;]~~

~~[(B) the name of student;]~~

~~[(C) the address of the student including city, state, and zip code;]~~

~~[(D) the telephone number of the student with area code;]~~

~~[(E) the social security number of the student;]~~

~~[(F) the date of birth of the student; and]~~

~~[(G) the name and dates of supervised education course work.]~~

(f) ~~[(d)]~~ Financial records must be retained as required by federal retention requirements, if applicable.

§117.65. *Massage School Conduct and Grievance Policy.*

(a) A massage school shall develop and implement a written policy pertaining to the conduct of students, including a grievance policy. The policy shall ~~[include]:~~

(1) include conditions for dismissal; ~~[and]~~

(2) include conditions for re-entrance of those students dismissed for violating the conduct policy;~~[-]~~

~~[(b) Each massage school shall establish a written grievance policy and procedure that is disclosed to all students at the time of enrollment.]~~

~~[(c) [The grievance policy and procedure shall:]~~

~~[(3) [(+)] attempt to resolve disputes between students, including drops and graduates, and the school or instructor;~~

~~[(4) [(2)] require that adequate records be maintained of grievances and resolutions;~~

~~[(5) [(3)] require that every effort to resolve grievances and complaints is made; and~~

~~[(6) [(4)] prohibit a massage school from disciplining or retaliating against a student for filing a complaint with the department.~~

§117.66. *Massage School Cancellation, Refund, and School Closure Policies.*

(a) Each massage school shall develop and implement a cancellation and refund policy which must provide a full refund of all monies paid by a student if:

(1) (No change.)

(2) the enrollment of the student was procured as the result of any misrepresentation in advertising, in promotional materials of the massage school [~~therapy educational program~~] or by the owner, [~~the massage school,~~] or massage therapy instructor; or

(3) (No change.)

(b) The policy must provide for the refund of the unused portion of tuition, fees, and other charges in the event the student, after expiration of the 72-hour cancellation privilege, fails to enter, withdraws from, or is terminated from the program at any time before completion. The policy must provide that:

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

(3) if tuition is collected in advance of the first day of the program, and if, after expiration of the 72-hour cancellation privilege, the student does not enter the program, not more than \$200 shall be retained by the massage school [~~therapy educational program~~];

(4) if a student enrolls in [~~enters~~] a massage school [~~therapy educational program~~] and is terminated or withdraws, the minimum refund of the tuition will be:

(A) during the first week or one-tenth of the program, whichever is less, 90% of the unused [~~remaining~~] tuition, fees, and charges;

(B) after the first week or one-tenth of the program, whichever is less, but within the first three weeks of the program, 80% of the unused [~~remaining~~] tuition, fees, and other charges;

(C) after the first three weeks of the program, but within the first quarter of the program, 75% of the unused [~~remaining~~] tuition, fees, and other charges;

(D) during the second quarter of the program, 50% of the unused [~~remaining~~] tuition, fees, and other charges;

(E) during the third quarter of the program, 10% of the unused [~~remaining~~] tuition, fees, and other charges; and

(F) (No change.)

(5) (No change.)

(6) if a program is discontinued by the massage school and this prevents the student from completing the program:

(A) all tuition, fees and other charges [~~and fees~~] paid shall be refunded if the student is not provided with a transcript of all successfully completed hours within thirty (30) days of discontinuance of the program; or

(B) in the event an additional or changed location is ten (10) miles or more from the previously approved location of instruction and an enrolled student is unable to complete the program at the additional or changed location as determined by the department:

(i) all tuition, fees and other charges [~~and fees~~] paid shall be refunded if the student is not provided with a transcript of all successfully completed hours within thirty (30) days of the change of location; or

(ii) all unused [~~unearned~~] tuition, fees, and other charges [~~and fees~~] shall be refunded if a transcript of all successfully

completed hours is provided within thirty (30) days of the change of location; and

(7) (No change.)

(c) The school will determine the value of any refund due to the student. If the school received any money designated for the payment of tuition, fees, and other charges and the value of the money is determined to be more than the portion used during the student's enrollment, then the student is eligible for a refund of the unused portion of the money received by the school.

(d) [~~(e)~~] In all refund computations, leaves of absence, suspensions, school holidays, days when classes are not offered, and summer vacations shall not be counted as part of the elapsed time for purposes of calculating a student's refund.

(e) [~~(d)~~] A massage school [~~therapy educational program~~] is considered to have made a good faith effort to consummate a refund if the student's file contains evidence of the following attempts:

(1) certified mail to student's last known address;

(2) certified mail to the student's permanent address; and

(3) certified mail to the address of the student's parent, if different from the permanent address and if known.

(f) [~~(e)~~] If the department determines that the method used to calculate refunds is not in compliance with this section and if the massage school does not provide the correct refund promptly, the school shall submit a report of an audit conducted by a certified public accountant or public accountant of the refunds due former students. The audit report shall be accompanied by a schedule of student refunds due which shall disclose the following information for the previous four years for each former student:

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

(g) [~~(f)~~] The department may take disciplinary action against the license of a massage school for a violation of this section; however, the department has no authority to recover a refund on behalf of a student.

[~~(g)~~ If a massage school suspends enrollments or closes, the school shall not advertise, solicit, or in any way advise prospective students, either directly or indirectly, of the program offerings.]

(h) (No change.)

(i) Refunds shall be made in accordance with the massage school's refund policy. The effective date of termination for purposes of refunds shall be the last day the student attended school.

§117.67. *Massage School Student [Minimum] Progress Requirements [Standards].*

(a) (No change.)

(b) Massage schools must submit to the department an electronic record of each student's accrued clock hours at least one time per month in a manner and format prescribed by the department. A massage school's initial submission of clock hours shall include all hours accrued at the school. Upon department approval, a massage school may submit data required under this subsection in an alternate manner and format as determined by the department, if the massage school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(c) Except for a documented leave of absence, a massage school shall electronically submit a student's withdrawal or termination to the department within ten (10) calendar days after the withdrawal or termination. Except for a documented leave of absence, a school

shall terminate a student who does not attend a massage school for thirty (30) school days.

(d) Upon a student's completion of the massage therapy educational program, the school shall notify the department that the student has completed the required number of hours and is eligible to take the appropriate examination.

(e) Upon notification from the massage school, the department shall make the student eligible to take the appropriate examination.

[(b) The progress evaluation system shall be based on grading periods: A grading period shall not cover more than 25% of the required program hours.]

[(e) A student who is making unsatisfactory progress at the end of a grading period shall be placed on probation for the next grading period. If the student on probation achieves satisfactory progress for the subsequent grading period but has not achieved the required grades for overall satisfactory progress, the student may be continued on probation for one more grading period.]

[(d) When a student is placed on probation, that student will be counseled before returning to class, and the date, action taken, and terms of the probation shall be clearly indicated on the appropriate permanent records.]

[(e) If the student on probation fails to achieve satisfactory progress for the first probationary grading period, the student's enrollment may be terminated.]

[(f) The enrollment of a student who fails to achieve overall satisfactory progress for the program at the end of two successive probationary grading periods shall be terminated.]

[(g) A student whose enrollment was terminated for unsatisfactory progress may reenter after a minimum of one grading period.]

[(h) Refunds shall be made in accordance with the massage school's refund policy. The effective date of termination for purposes of refunds shall be the last day of the last probationary grading period.]

[(i) A student who returns after the enrollment was terminated for unsatisfactory progress shall be placed on probation for the next grading period. The student shall be advised of this action and the student's file documented accordingly. If the student does not maintain satisfactory progress during or by the end of this probationary period, the student will be terminated.]

§117.68. *Massage School Attendance Policy.*

(a) Each massage school shall develop and implement a written policy relating to attendance for students enrolled in a massage school [therapy educational program] or any portion of the course of instruction.

(b) - (d) (No change.)

(e) The attendance policy shall require the termination of students who accumulate absences of[;]

[(+) more than ten (10) consecutive school days.[; or]

[(2) more than 15% of the total clock hours in a program, or 15% of a portion of the program if a student enrolls in less than the total minimum 500 hours.]

(f) Refunds shall be made in accordance with massage school's refund policy. The effective date of termination for purposes of refunds shall be the last date of absence under subsection (e). [A student whose enrollment is terminated for violation of the attendance policy may not reenter before the start of the next grading period.]

(g) - (h) (No change.)

(i) A leave of absence for reasonable purposes acceptable to the massage school [therapy educational program] shall not exceed the lesser of thirty (30) school days or sixty (60) calendar days.

(1) (No change.)

(2) Attendance records shall clearly show the dates for which the leave of absence was granted. A written statement as to why the leave of absence was granted, signed by both the student and the director of the massage school [therapy educational program] indicating approval, shall be placed in the student's file.

(3) (No change.)

(j) Each massage school [therapy educational program] must maintain a master record of attendance which clearly indicates the number of scheduled hours each day and the hours of absence for each student. Entries to the attendance log must indicate whether or not a student was in attendance and must be permanent.

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

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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



16 TAC §117.56, §117.60

The proposed repeal is proposed under Texas Occupations Code, Chapters 51 and 455, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The proposed repeal is also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposed repeal.

§117.56. *Massage School Financial Stability--Documents and Requirements.*

§117.60. *Massage School Advanced Course Work.*

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. LICENSED MESSAGE ESTABLISHMENTS

16 TAC §§117.80, 117.82, 117.83

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The proposed rules are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.80. Massage Establishment Application Procedures and Licensure.

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

(c) Each applicant for a massage establishment must:

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

(3) successfully pass a criminal history background check performed by the department in accordance with the Act, the department's criminal conviction guidelines, and pursuant to Texas Occupations Code, Chapters 51 and 53.

(d) A criminal history check performed under this subsection requires an applicant for a license to submit a complete and legible set of fingerprints, on a form prescribed by the department, to the department 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.

(e) The department may not issue a license to a person who does not comply with the requirements of this section.

(f) The department shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(g) For purposes of this section, if the applicant for a license is an entity, the applicant must submit fingerprints as required by this section for each individual who:

(1) personally or constructively holds, including as the beneficiary of a trust:

(A) at least 10 percent of the entity's outstanding stock;

or

(B) more than \$25,000 of the fair market value of the entity;

(2) has the controlling interest in the entity;

(3) has a direct or indirect participating interest through shares, stock, or otherwise, regardless of whether voting rights are included, of more than 10 percent of the profits, proceeds, or capital gains of the entity;

(4) is a member of the board of directors or other governing body of the entity; or

(5) serves as:

(A) an elected officer of the entity; or

(B) a general manager of the entity.

§117.82. Massage Establishments--General Requirements.

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

(j) A massage establishment must display a sign containing human trafficking information as required by Texas Occupations Code, Chapter 455, §455.207, in a form and manner prescribed by the commission that is:

(1) in a conspicuous place clearly visible to the public; and

(2) acceptable to the department.

(k) A massage establishment shall not allow any individual, including a student, license holder, or employee, to reside on the premises of the massage establishment. This does not apply to a place of business exempted by Texas Occupations Code Chapter 455, §455.155(c)(2), from the requirement to hold a license as a massage establishment or to a licensed massage therapist who practices as a solo practitioner and who is exempted under Texas Occupations Code Chapter 455, §455.155(b), from the requirement to hold a license as a massage establishment.

§117.83. Sanitation Requirements for Massage Establishments.

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

(h) Clean linens [sheets] shall be used on each client.

(i) ~~[Soiled sheets are to be discarded.] After linens have [a sheet has] been used once, they must [it shall] be deposited in a fully closed or partially closed [receptacle,] container[; or basket,] and shall not be used again until properly washed and disinfected in chlorinated bleach and hot water.~~

~~[(j) Used towels shall be washed in chlorinated hot water.]~~

(j) ~~[(k) Lubricants, including oils, [Oil] must be kept in closed containers.~~

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

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Brad Bowman

General Counsel

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SUBCHAPTER H. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§117.90, 117.91, 117.93

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The proposed rules are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.90. General Ethical Requirements.

(a) - (t) (No change.)

(u) A licensee shall provide draping and treatment services sufficient to protect a client's safety, comfort, and privacy, and must drape:

(1) the genital area and gluteal cleavage of all clients at all time; and

(2) the breasts of female clients at all times, unless performing breast massage as specifically authorized through the signed consultation document referenced in §117.91.

§117.91. Consultation Document.

(a) A licensee shall provide an initial consultation to each client before the first massage therapy session and obtain the signature of the client on the consultation document. The consultation document shall include:

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

(3) a statement that the licensee shall drape the breasts of all female clients and not engage in breast massage of female clients without the written consent of the client;

(4) a statement that draping of the genital area and gluteal cleavage will be used at all times during the session for all clients; ~~unless otherwise agreed to in writing by both the client and the licensee~~;

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

(b) (No change.)

§117.93. Advertising.

(a) (No change.)

(b) A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification. False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

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

~~[(4) contains a testimonial;]~~

~~(4) [(5)] causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;~~

~~(5) [(6)] advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;~~

~~(6) [(7)] advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;~~

~~(7) [(8)] makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of client; or~~

~~(8) [(9)] advertises or represents in the use of a professional name, title or professional identification that is expressly or commonly reserved to or used by another profession or professional.~~

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

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

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SUBCHAPTER I. FEES

16 TAC §117.100

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 455, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The proposed rules are also proposed under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the proposed rules.

§117.100. Fees.

(a) (No change.)

(b) Fees related to massage therapists are as follows:

(1) student permit fee--\$25;

(2) [(4)] initial application fee--\$100;

(3) [(2)] renewal application fee (for two-year license)--

\$75.

(c) (No change.)

(d) Fees related to massage schools offering the massage therapy educational program are as follows:

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

(3) change of location [instructional address for main campus] (includes inspections)--\$300;

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

(e) - (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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General Counsel

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER DD. COMMISSIONER'S

RULES CONCERNING SUBSTITUTE ASSESSMENTS FOR GRADUATION

19 TAC §101.4002

The Texas Education Agency (TEA) proposes an amendment to §101.4002, concerning end-of-course (EOC) substitute assessments for graduation. The proposed amendment would modify the rule to reflect changes in statute made by Senate Bill (SB) 213, 86th Texas Legislature, 2019. The proposed amendment would modify the rule to align Texas assessment and accountability policies with federal requirements.

BACKGROUND INFORMATION AND JUSTIFICATION Section 101.4002 specifies the assessments the commissioner of education recommends as substitute assessments that a student may use to meet EOC assessment graduation requirements and establishes the cut scores needed for graduation purposes. The proposed amendment would update the language to be in alignment with state and federal laws. There are no changes to the substitute assessments allowed or the required scores indicated in the figure in subsection (b).

In December 2018, the U.S. Department of Education (USDE) issued an action item following a federal monitoring visit requiring Texas to cease the use of substitute assessments for accountability purposes. In March 2019, the TEA responded to the USDE asking for additional time to determine options for continuing this policy while remaining compliant with federal law. TEA has extensively explored options and determined that our state policy on substitute assessments cannot be successfully reconciled with federal accountability statute. As a result, beginning

with the 2020 accountability cycle, substitute assessments will not be included in state or federal accountability calculations. Under the Elementary and Secondary Education Act of 1965 (ESEA), a state is required to adopt and administer the same academic assessments to measure the achievement of all public-school students in the state. Furthermore, states are required to include these assessment results in the accountability system. As such, the proposed amendment would add subsection (c)(1) to require students to take an EOC assessment at least once for federal accountability purposes prior to being eligible to use a substitute assessment to meet graduation purposes. Substitute assessments will continue to be an option for students to meet state graduation requirements.

SB 213, 86th Texas Legislature, 2019, amended the TEC, §39.025(a-3), to extend the expiration date of the provision that allows eligible students to qualify to use the Texas Success Initiative assessment as a substitute assessment to September 1, 2023. To implement SB 213, the proposed amendment would modify subsection (d)(2)(B) by extending the expiration date to September 1, 2023.

The proposed amendment would modify the language in subsection (e) to require students to take an EOC assessment at least once for the purpose of federal accountability based on ESEA requirements. The proposed amendment would also modify the language in subsection (e) to remove the reference to "the substitute assessment bubble" as that bubble will no longer be included on answer documents for EOC assessments.

The proposed amendment would clarify the names of the assessments in subsection (f) to allow a student to use qualifying scores on PSAT, PLAN, or Aspire tests if he or she has taken that test and a corresponding EOC assessment and failed both. "PSAT" would replace "PSAT-related assessment," which includes all forms of the PSAT and PSAT/NMSQT. "PLAN or Aspire" would replace "pre-ACT" to be more specific.

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

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation due to the extension of the expiration date and increase the number of individuals subject to the rule's applicability by allowing

more students to obtain high school diplomas in specific circumstances. However, the proposed rulemaking would limit an existing regulation due to federal accountability requirements and decrease the overall number of individuals subject to the rule's applicability since more students will meet assessment graduation requirements with EOC assessments (which they have to take first) instead of substitute assessments.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Laux has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is in alignment with current state and federal law. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins October 11, 2019, and ends November 12, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 11, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39.023(c), which requires the agency to adopt end-of-course (EOC) assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history; TEC, §39.025, which establishes the secondary-level performance required to receive a Texas high school diploma; TEC, §39.025(a), which requires the commissioner of education to adopt rules requiring students to achieve satisfactory performance on each EOC assessment listed under TEC, §39.023(c), in order to receive a Texas high school diploma; TEC, §39.025(a-1), (a-2), and (a-3), which allow for the use of specific substitute assessments to satisfy the EOC assessment graduation requirements under certain conditions; TEC, §39.025(a-3), as amended by SB 213, 86th Texas Legislature, 2019, which extends the expiration date to allow a student who has failed to perform satisfactorily on EOC assessment instruments to use the Texas Success Initiative assessment as a substitute assessment to meet graduation requirements. The expiration date changed from September 1, 2019, to September 1, 2023; and the Elementary and Secondary Educa-

tion Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B)(i) and (vii), which requires the same academic assessments to be used to measure the achievement of all public-school students in the state and all students must participate in the assessments with few exceptions (e.g., students with significant cognitive disabilities).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.023, as amended by House Bill 3906, 86th Texas Legislature, 2019; §39.025, as amended by Senate Bill 213, 86th Texas Legislature, 2019; and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, §1111(b)(2)(B).

§101.4002. *State of Texas Assessments of Academic Readiness End-of-Course Substitute Assessments.*

(a) For purposes of this subchapter, "equivalent course" is defined as a course having sufficient content overlap with the essential knowledge and skills of a similar course in the same content area listed under §74.1(b)(1)-(4) of this title (relating to Essential Knowledge and Skills).

(b) Effective beginning with the 2011-2012 school year, in accordance with the Texas Education Code (TEC), §39.025(a-1), (a-2), and (a-3), the commissioner of education adopts certain assessments as provided in the chart in this subsection as substitute assessments that a student may use in place of a corresponding end-of-course (EOC) assessment under the TEC, §39.023(c), to meet the student's assessment graduation requirements. A satisfactory score on an approved substitute assessment may be used in place of only one specific EOC assessment, except in those cases described by subsection (d)(1) of this section.

Figure: 19 TAC §101.4002(b) (No change.)

(c) A student at any grade level is eligible to use a substitute assessment as provided in the chart in subsection (b) of this section if:

(1) a student has not been successful on the corresponding EOC assessment after taking the assessment at least once;

(2) [(+) a student was administered an approved substitute assessment for an equivalent course in which the student was enrolled;

(3) [(2) a student received a satisfactory score on the substitute assessment as determined by the commissioner and provided in the chart in subsection (b) of this section; and

(4) [(3) a student using a Texas Success Initiative (TSI) assessment also meets the requirements of subsection (d) of this section.

(d) Effective beginning with the 2014-2015 school year, a student must meet criteria established in paragraph (1) or (2) of this subsection in order to qualify to use TSI as a substitute assessment.

(1) A student must have been enrolled in a college preparatory course for English language arts (PEIMS code CP110100) or mathematics (PEIMS code CP111200) and, in accordance with the TEC, §39.025(a-1), have been administered an appropriate TSI assessment at the end of that course.

(A) A student under this paragraph who meets all three TSI English language arts score requirements provided in the chart in subsection (b) of this section satisfies both the English I and English II EOC assessment graduation requirements.

(B) A student under this paragraph may satisfy an assessment graduation requirement in such a manner regardless of previous performance on an Algebra I, English I, or English II EOC assessment.

(2) In accordance with the TEC, §39.025(a-3), a student who has not been successful on the Algebra I or English II EOC assessment after taking the assessment at least two times may use the corresponding TSI assessment in place of that EOC assessment.

(A) For a student under this paragraph who took separate reading and writing assessments for the English II EOC assessment and who did not meet the English II assessment graduation requirement using those tests as specified in §101.3022(b) of this title (relating to Assessment Requirements for Graduation), the separate TSI reading or writing assessment may not be used to substitute for the corresponding English II reading or writing EOC assessment.

(B) The provisions of this paragraph expire September 1, 2023 [2019]. A student may meet the assessment graduation requirements under this paragraph using TSI if the student has met the necessary score requirements as specified in subsection (b) of this section prior to September 1, 2023 [2019].

(e) A student electing to substitute an assessment for graduation purposes must still take the corresponding EOC assessment required under the TEC, §39.023(c), at least once for federal accountability purposes [unless the student met the requirements specified in subsection (e) of this section]. If a student sits for an EOC assessment, a school district may not void or invalidate the test in lieu of a [mark the] substitute assessment [bubble for that administration].

(f) A student who fails to perform satisfactorily on a PSAT, PLAN, or Aspire [PSAT-related assessment or pre-ACT] test (or any versions of these tests) as indicated in the chart in subsection (b) of this section must take the appropriate EOC assessment required under the TEC, §39.023(c). However, a student who does not receive a passing score on the EOC assessment and retakes a PSAT, PLAN, or Aspire [PSAT-related assessment or pre-ACT] test (or any versions of these tests) is eligible to meet the requirements specified in 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.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.8

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §101.8, concerning persons with criminal backgrounds. This amendment will implement the changes to the Board's consideration of criminal convictions required by H.B. 1342 of the 86th Legislature, and the automatic application

denials and revocations of licenses required by H.B. 1899 of the 86th Legislature.

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

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's implementation of legislative direction for the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §101.8, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicability will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

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

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

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

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

This rule is proposed under Texas Occupations Code §254.001(a)-(b), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and permits the Board to adopt rules regarding its proceedings and the examination of applicants for a license to practice dentistry. Additionally, the rule is proposed under Texas Occupations Code §262.102(a), which gives the Board authority to adopt rules relating to professional conduct

for dental hygienists, and Texas Occupations Code §265.0015 which permits the Board to adopt rules that establish the requirements for dental assistant registration.

This rule implements H.B. 1342 and H.B. 1899 of the 86th Legislature.

§101.8 Persons with Criminal Backgrounds.

(a) The purpose of this section is to establish automatic sanctions, mandatory sanctions, recommended sanctions, guidelines and criteria for the disciplinary actions to be taken by the Board against applicants and licensees with criminal backgrounds.

(b) Definitions. In this section, the following terms shall apply:

(1) "Applicant" means a person applying for a license, certificate, registration, permit, or other authorization that is issued by the Board under the Dental Practice Act.

(2) "Conviction" shall mean a conviction under federal law or the law of any state, district, or territory of the United States. A conviction shall be considered "final" upon the imposition of a sentence of imprisonment, parole, probation, community supervision, or other punishment after such conviction. Pursuant to Texas Occupations Code §53.021(e)(1), the Board shall consider placement of a defendant under deferred adjudication community supervision, or a similar deferral of adjudication of guilt under federal or state law, as a final conviction for all licensing and disciplinary purposes under the Texas Occupations Code and Board rules.

(3) "Final Disposition" shall mean the date on which the applicant or licensee completed the imposed sentence after conviction, including any period of parole or probation, or completed the conditions of deferred adjudication community supervision or similar deferral of adjudication of guilt, as shown by the certified records of the court or supervising government authority.

(4) "Health Care Professional" shall have the meaning provided in Texas Occupations Code §108.051.

(5) [(4)] "License" means a license, certificate, registration, permit, or other authorization that is issued by the Board under the Dental Practice Act.

(6) [(5)] "Licensee" means the holder of a license, certificate, registration, permit, or other authorization that is issued by the Board under the Dental Practice Act.

(7) [(6)] "Offense Relating to the Regulation of Dentists, Dental Hygienists or Dental Assistants" means any criminal violation of the Texas Dental Practice Act; any criminal violation of a law related to the billing and payment for dental care services; any criminal violation of a law related to the treatment and care of patients; and any criminal violation of a law related to the preservation and protection of patient records or patient protected health information.

(c) Automatic Denial or Revocation of Dental or Dental Hygiene License. Based upon Chapter 108, Subchapter B, of the Texas Occupations Code, certain convictions shall result in automatic denial of an application for a dental or dental hygiene license, or revocation of a current dental or dental hygiene license. A person who is denied or a licensee who has their license revoked under this subsection may reapply for the license, or apply for reinstatement of the revoked license, if the conviction or deferred adjudication is reversed, set aside, or vacated on appeal, or after the expiration of the period for which the person is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(1) Automatic Denial of Application. The following convictions shall result in automatic denial of an application for licensure as a dentist or dental hygienist submitted on or after September 1, 2019.

(A) Any conviction resulting in the requirement that the applicant register as a sex offender under Chapter 62, Code of Criminal Procedure.

(B) Any previous conviction of or placement on deferred adjudication community supervision for the commission of a felony offense involving the use or threat of force.

(C) Any previous conviction or placement on deferred adjudication community supervision for the commission of an offense under Texas Penal Code §§22.011, 22.02, 22.021, or 22.04, or an offense under the laws of another state or federal law that is equivalent to an offense under one of those sections:

(i) committed when the applicant held a license as a health care professional in this state or another state;

(ii) committed in the course of providing services within the scope of the applicant's health care professional license; and

(iii) in which the victim of the offense was a patient of the applicant.

(2) Automatic Revocation of License. The following convictions shall result in automatic proceedings to revoke the license of a dentist or dental hygienist. The Board shall revoke a license and update the Board's records to reflect the revocation immediately on receiving notification pursuant to Texas Occupations Code §108.053(b). If the Board receives notice through another source, the Board shall pursue a revocation action through Texas Occupations Code §263.003.

(A) Any conviction resulting in the requirement that the licensee register as a sex offender under Chapter 62, Code of Criminal Procedure.

(B) Any conviction of or placement on deferred adjudication community supervision for the commission of a felony offense involving the use or threat of force.

(C) Any conviction or placement on deferred adjudication community supervision for the commission of an offense under Texas Penal Code §§22.011, 22.02, 22.021, or 22.04, or an offense under the laws of another state or federal law that is equivalent to an offense under one of those sections:

(i) committed while the licensee held a license as a health care professional in this state or another state;

(ii) committed in the course of providing services within the scope of the licensee's health care professional license; and

(iii) in which the victim of the offense was a patient of the licensee.

(d) [(e)] Imposition of Mandatory Sanctions for Criminal Convictions. Based upon Texas Occupations Code §263.006 and the interests of public health and safety, the Board shall impose the following mandatory sanctions on licensees for the following offenses. In the event that a sanction from subsection (c) of this section is also applicable to a licensee, the Board shall impose the automatic sanction instead of the sanction under this subsection. The Board may not reinstate or reissue a license suspended or revoked under this section unless an express determination is made that the reinstatement or reissuance of the license is in the best interests of the public and the licensee whose license was suspended or revoked. The Board must base that determination on substantial evidence contained in an investigative report.

(1) Felony Convictions. The Board shall revoke the license of a current licensee who receives a final felony conviction under federal law or the law of any state, district, or territory of the United States.

(2) Assaultive Offenses. The Board shall revoke the license of a current licensee who receives a misdemeanor final conviction under Chapter 22 of the Texas Penal Code, other than a misdemeanor punishable by fine only.

(3) Mandatory Registration as Sex Offender. The Board shall revoke the license of a current licensee who receives a final conviction requiring the licensee register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(4) Violation of Certain Court Orders, Protective Orders, or Conditions of Bond. The Board shall revoke the license of a current licensee who receives a Class A or Class B misdemeanor final conviction under Section 25.07 or Section 25.071 of the Texas Penal Code.

(e) ~~[(d)]~~ Imposition of Recommended Sanctions for Criminal Convictions. Based upon statutory authorization and the interests of public health and safety, the Board shall impose the following recommended sanctions for the following offenses, based on the Board's determination that these offenses relate to the practice of dentistry, and the Board's determination that allowing a licensee to practice dentistry or provide dental services under a license issued by the Board provides an opportunity for further criminal conduct. In the event that a sanction from subsections (c) or (d)~~subsection (e)]~~ of this section is also applicable to a licensee, the Board shall impose the automatic or mandatory sanction instead of the recommended sanction under this subsection. If more than one recommended sanction applies to the conviction of a licensee or applicant, the Board shall apply the highest recommended sanction applicable. The Board may only increase these recommended sanctions upon an affirmative finding that persuasive aggravating factors require elevation of the sanction for the protection of public health and safety. The Board shall reduce the following sanctions only upon an affirmative finding of persuasive mitigating factors presented by the applicant or licensee, as applicable. The Board shall articulate these aggravating or mitigating factors in any order adopting the sanctions to be imposed on the licensee.

(1) Current Licensees. The Board shall impose the following disciplinary sanctions based upon convictions which occurred after the Board issued a license.

(A) Conviction for Offense Relating to the Regulation of Dentists, Dental Hygienists or Dental Assistants. Pursuant to Texas Occupations Code §263.002(a)(10), the Board shall take disciplinary action for convictions related to the practice of dentistry. The Board has determined that violations of law relating to the practice of dentistry and dental hygiene are directly related to patient safety and care, and holding a license allows for the opportunity to engage in further criminal activity causing harm to the public. As a result, the Board shall impose a five-year probated suspension for a final conviction for an offense relating to the regulation of dentists, dental hygienists or dental assistants.

(B) Conviction of Misdemeanor Involving Fraud. Pursuant to Texas Occupations Code §263.002(a)(2), the Board shall take disciplinary action for misdemeanor convictions involving fraud. The Board has determined that holding a license allows access to sensitive patient records and information, which requires the licensee to demonstrate the ability and~~;~~ capacity ~~and fitness~~ required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall impose a one-year probated suspension for a final conviction of a misdemeanor under Chapter 32 of the Texas Penal Code, or an equivalent section of

federal law or the law of any state, district, or territory of the United States.

(C) Offenses under the Texas Controlled Substances Act, Texas Dangerous Drugs Act and Related Offenses. The Board has determined that holding a license allows access to controlled substances, dangerous drugs and other substances that represent the potential for abuse and drug diversion, which requires the licensee to demonstrate the ability and~~;~~ capacity ~~and fitness~~ required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall impose a one-year probated suspension on a current licensee who receives a Class A misdemeanor final conviction under Chapter 481, 483, or 485, Texas Health and Safety Code. The Board may impose a Reprimand for a Class B misdemeanor final conviction pursuant to subsection ~~(e)(1)(D)~~~~[(d)(1)(D)]~~ of this section.

(D) Other Class A and B Misdemeanor Offenses. The Board shall not automatically impose a disciplinary sanction, but may impose a disciplinary sanction after weighing the considerations required by Texas Occupations Code Chapters 53 and 263, and as listed in subsections (g) - (i)~~subsection (h)]~~ of this section.

(2) License Applicants. The Board shall impose the following disciplinary sanctions based upon convictions that occurred prior to the submission of an application for a license.

(A) Felony Convictions. The Board has determined that holding a license allows access to confidential patient records and information, controlled substances and dangerous drugs, and patients in sensitive and compromised physical conditions, which requires the applicant to demonstrate the ability and~~;~~ capacity ~~and fitness~~ required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. Pursuant to Texas Occupations Code §263.001(a)(5), the Board shall deny an applicant who received a final felony conviction under federal law or the law of any state, district, or territory of the United States that is still pending final disposition. The Board shall impose a five-year probated suspension on an applicant with a final conviction for a felony that is less than five years from the date of final disposition. From five to ten years after the date of final disposition, the Board shall impose a one-year probated suspension. After ten years from the date of final disposition, the Board shall take no action.

(B) Conviction for Offense Relating to the Regulation of Dentists, Dental Hygienists or Dental Assistants. The Board has determined that violations of Texas law relating to the practice of dentistry are directly related to patient safety and care, and holding a license allows for the opportunity to engage in further criminal activity causing harm to the public. Pursuant to Texas Occupations Code §263.001(a)(4) and (a)(6), the Board shall deny an applicant who received a final conviction for an offense relating to the regulation of dentists, dental hygienists or dental assistants within the twelve months preceding the date the applicant filed an application for a license. The Board shall impose a five-year probated suspension on an applicant who received a final conviction for an offense relating to the regulation of dentists, dental hygienists or dental assistants that is still pending final disposition, but which occurred prior to the twelve months preceding the date the applicant filed an application for a license. The Board shall impose a one-year probated suspension on an applicant with a final conviction for an offense relating to the regulation of dentists, dental hygienists or dental assistants that is less than five years from the date of final disposition. After five years from the date of final disposition, the Board shall take no action.

(C) Mandatory Registration as Sex Offender. The Board has determined that holding a license allows access to controlled

substances and dangerous drugs, and patients in sensitive and compromised physical conditions, including minor patients and patients with mental and physical disabilities, which requires the ability and~~;~~ capacity ~~and fitness~~ required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, if the applicant is not subject to Texas Occupations Code §108.052, the Board shall deny an applicant who received a final conviction requiring the applicant register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(D) Assaultive Offenses. The Board has determined that holding a license allows access to patients in sensitive and compromised physical conditions, which requires the applicant to demonstrate the ability and~~;~~ capacity ~~and fitness~~ required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, if the applicant is not subject to Texas Occupations Code §108.052, the Board shall deny an applicant who received a misdemeanor final conviction under Chapter 22 of the Texas Penal Code, other than a misdemeanor punishable by fine only, within the twelve months preceding the date the applicant filed an application for a license. The Board shall impose a five-year probated suspension on an applicant who received a final conviction for an assaultive offense, other than a misdemeanor punishable by fine only, that is less than five years from the date of final disposition. After five years from the date of final disposition, the Board shall take no action.

(E) Violation of Certain Court Orders, Protective Orders, or Conditions of Bond. The Board has determined that holding a license allows access to confidential patient records and information, and patients in sensitive and compromised physical conditions, which requires the applicant to demonstrate the ability and~~;~~ capacity ~~and fitness~~ required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall deny an applicant who received a Class A or Class B misdemeanor final conviction under Section 25.07 or Section 25.071 of the Texas Penal Code, within the twelve months preceding the date the applicant filed an application for a license. The Board shall impose a five-year probated suspension on an applicant who received a final conviction under Section 25.07 or Section 25.071 of the Texas Penal Code that is less than five years from the date of final disposition. After five years from the date of final disposition, the Board shall take no action.

(F) Offenses under the Texas Controlled Substances Act, Texas Dangerous Drugs Act and Related Offenses. The Board has determined that holding a license allows access to confidential patient records and information, controlled substances, and dangerous drugs, which requires the applicant to demonstrate the ability and~~;~~ capacity ~~and fitness~~ required to perform the duties and discharge the responsibilities of a licensee acting in the best interests of the public. As a result, the Board shall impose a one-year probated suspension on an applicant who received a Class A misdemeanor final conviction under Chapter 481, 483, or 485, Texas Health and Safety Code that is less than five years from the date of final disposition. The Board may impose a Reprimand for a Class B misdemeanor final conviction that is less than five years from the date of final disposition, pursuant to subsection (e)(2)(G)~~(d)(2)(G)~~ of this section. After five years from the date of final disposition, the Board shall take no action.

(G) Other Class A and B Misdemeanor Offenses. The Board shall not automatically impose a disciplinary sanction, but may impose a disciplinary sanction after weighing the considerations required by Texas Occupations Code Chapters 53 and 263, and as listed in subsections (g) - (i) ~~(f) - (g)~~ of this section.

(f) ~~(e)~~ Pursuant to Texas Occupations Code §53.021(b), the Board shall revoke a license upon the imprisonment of the licensee fol-

lowing a felony conviction or deferred adjudication, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(g) ~~(f)~~ The Board may impose any authorized disciplinary action on an applicant or licensee because of a person's conviction of a crime, other than a Class C misdemeanor, that:

(1) serves as a ground for discipline under the Dental Practice Act or other Texas law applicable to the applicant or licensee; or;

(2) the Board has determined directly relates to the duties and responsibilities of a licensee, after ~~including~~ consideration of 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;

(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 applicant or licensee previously had been involved; ~~and~~

(D) the relationship of the crime to the ability and~~;~~ capacity~~;~~ or fitness required to perform the duties and discharge the responsibilities of the licensee; and ~~or~~

(E) any correlation between the elements of the crime and the duties and responsibilities of the licensee.

~~[(3) does not directly relate to the duties and responsibilities of a licensee and that was committed within the previous five years.]~~

(h) ~~(g)~~ In determining the appropriate disciplinary action to take where the Board is not mandated to take a certain disciplinary action, the Board ~~shall~~~~may~~ consider the following factors listed in paragraphs (1) - (7) ~~(6)~~ of this subsection when determining whether to impose any authorized discipline:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; ~~and~~

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) ~~(6)~~ other evidence of the person's fitness, including letters of recommendation, ~~from:~~

~~[(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~[(B) the sheriff or chief of police in the community where the person resides; and]~~

~~[(C) any other person in contact with the convicted person.]~~

(i) ~~(h)~~ The applicant or licensee has the responsibility, to the extent possible, to obtain and provide to the Board the recommendations described ~~[of the prosecution, law enforcement, and correctional authorities as referenced]~~ by subsection (h)(7) ~~(g)(6)~~ of this section.

{(i) In addition to fulfilling the requirements of subsection (g) of this section, if requested by the Board, the person shall furnish proof in the form required by the Board that the person has:}

{(1) maintained a record of steady employment;}

{(2) supported the person's dependents;}

{(3) maintained a record of good conduct; and}

{(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the person has been convicted.}

(j) An applicant or licensee shall disclose in writing to the Board any arrest, conviction or deferred adjudication against him or her at the time of initial application and renewal. Additionally, an applicant or licensee shall provide information regarding any arrest, conviction or deferred adjudication to the Board within 30 days of a Board request. An application shall be deemed withdrawn if the applicant has failed to respond to a request for information or to a proposal for denial of eligibility or conditional eligibility within 30 days. Pursuant to Texas Government Code §2005.052, making a false statement or material misrepresentation when applying or renewing a license, refusing to provide requested information to the Board, or failing to provide all of the criminal history requested by the Board represents grounds for denial of the application or suspension or revocation of the license.

(k) Notice of Pending Denial of License. Prior to denying a license application for prior criminal convictions as permitted by Texas Occupations Code Chapter 53, the Board shall provide written notice to the person of the reason for the intended denial and allow the person not less than 30 days to submit any relevant information to the Board, as required by Texas Occupations Code §53.0231.

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 September 30, 2019.

TRD-201903493

W. Boyd Bush, Jr.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 10, 2019

For further information, please call: (512) 305-8910



CHAPTER 104. CONTINUING EDUCATION

22 TAC §104.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §104.1, concerning continuing education requirements. This amendment will implement the requirements for safe and effective pain management education required by H.B. 2454 of the 86th Legislature and implementing the requirements of Section 257.005(b-1) of the Occupations Code. Per Section 4 of H.B. 2454, the requirements of additional continuing education do not apply to renewal applications submitted before January 1, 2021. Additionally, this amendment permits continuing education courses taken pursuant to 22 TAC §111.1 to satisfy recordkeeping continuing education requirements; the Board is proposing an amendment to 22 TAC §111.1 simultaneously with this amendment.

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

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's implementation of legislative direction for the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §104.1, and the current Board rule does not specifically effect any geographic region of Texas. No expansion of applicability will occur by the adoption of this rule. Therefore, no new local economies will be effected by this rule amendment.

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

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

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

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

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §257.005(b-1) (effective Sept. 1, 2019), which directs the Board to require a licensed dentist whose practice includes direct patient care to complete not less than two hours of board-approved continuing education annually regarding safe and effective pain management related to the prescription of opioids and other controlled substances.

This rule implements the requirements of H.B. 2454 of the 86th Legislature and Texas Occupations Code § 257.005(b-1).

§104.1 Requirement.

As a prerequisite to the biennial renewal of a dental or dental hygiene license, proof of completion of 24 hours of acceptable continuing education is required.

(1) Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Providers). A licensee, other than a licensee who resides outside of the United States, who is unable to meet education course requirements may request that alternative courses or procedures be approved by the Licensing Committee.

(A) Such requests must be in writing and submitted to and approved by the Licensing Committee prior to the expiration of the biennial period for which the alternative is being requested.

(B) A licensee must provide supporting documentation detailing the reason why the continuing education requirements set forth in this section cannot be met and must submit a proposal for alternative education procedures.

(C) Acceptable causes may include unanticipated financial or medical hardships or other extraordinary circumstances that are documented.

(D) A licensee who resides outside of the United States may, without prior approval of the Licensing Committee, complete all required hours of coursework by self-study.

(i) These self-study hours must be provided by those entities cited in §104.2 of this title [~~(relating to Providers)~~]. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(ii) Upon being audited for continuing education compliance, a licensee who submits self-study hours under this subsection must be able to demonstrate residence outside of the United States for all periods of time for which self-study hours were submitted.

(E) Should a request to the Licensing Committee be denied, the licensee must complete the requirements of this section.

(2) Effective September 1, 2018, the following conditions and restrictions shall apply to coursework submitted for renewal purposes:

(A) At least 16 hours of coursework must be either technical or scientific as related to clinical care. The terms "technical" and "scientific" as applied to continuing education shall mean that courses have significant intellectual or practical content and are designed to directly enhance the practitioner's knowledge and skill in providing clinical care to the individual patient.

(B) Effective January 1, 2021, a licensed dentist whose practice includes direct patient care must complete not less than 2 hours of continuing education annually, and not less than 4 hours for each biennial renewal, regarding safe and effective pain management related to the prescription of opioids and other controlled substances. These 4 hours may be used to satisfy the 16-hour technical and scientific requirement. The courses taken to satisfy the safe and effective pain management requirement must include education regarding:

(i) reasonable standards of care;

(ii) the identification of drug-seeking behavior in patients; and

(iii) effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

(C) [~~(B)~~] Up to 8 hours of coursework may be in risk-management courses. Acceptable "risk management" courses include courses in risk management, record-keeping, and ethics. Dentists may complete continuing education courses described by §111.1 of this title (relating to Additional Continuing Education Required) to satisfy a portion of the risk-management requirement.

(D) [~~(C)~~] Up to 8 hours of coursework may be self-study. These self-study hours must be provided by those entities cited in §104.2 of this title [~~(relating to Providers)~~]. Examples of self-study courses include correspondence courses, video courses, audio courses, and reading courses.

(E) [~~(D)~~] Hours of coursework in the standards of the Occupational Safety and Health Administration (OSHA) annual update course or in cardiopulmonary resuscitation (CPR) basic life support training may not be considered in the 24-hour requirement.

(F) [~~(E)~~] Hours of coursework in practice finance may not be considered in the 24-hour requirement.

(3) Each licensee shall complete the jurisprudence assessment every four (4) years. This requirement is in addition to the twenty-four (24) hours of continuing education required biennially for the renewal of a license.

(4) A licensee may carry forward continuing education hours earned prior to a renewal period which are in excess of the 24-hour requirement and such excess hours may be applied to subsequent years' requirements. Excess hours to be carried forward must have been earned in a classroom setting and within the one year immediately preceding the renewal period. A maximum of 24 total excess credit hours may be carried forward.

(5) Examiners for the Western Regional Examining Board (WREB) and for Central Regional Dental Testing Services Inc. (CRDTS) will be allowed credit for no more than 12 hours biennially, obtained from calibration and standardization exercises associated with the examinations.

(6) Any individual or entity may petition one of the providers listed in §104.2 of this title to offer continuing education.

(7) Providers cited in §104.2 of this title will approve individual courses and/or instructors.

(8) A consultant for the SBDE who is also a licensee of the SBDE is eligible to receive up to 12 hours of continuing education credit biennially to apply towards the biennial renewal continuing education requirement under this section.

(A) Continuing education credit hours shall be awarded for the issuance of an expert opinion based upon the review of SBDE cases and for providing assistance to the SBDE in the investigation and prosecution of cases involving violations of the Dental Practice Act and/or the Rules of the SBDE.

(B) The amount of continuing education credit hours to be granted for each consultant task performed shall be determined by the Executive Director, Division Director or manager that authorizes the consultant task to be performed. The award of continuing education credit shall be confirmed in writing and based upon a reasonable assessment of the time required to complete the task.

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 September 30, 2019.

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W. Boyd Bush, Jr.
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 305-8910



CHAPTER 111. STANDARDS FOR PRESCRIBING CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

22 TAC §111.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §111.1, concerning additional continuing education requirements for prescribing controlled substances. This amendment will implement the requirements for continuing education required by H.B. 2174 of the 86th Legislature and the requirements of Section 481.07635 of the Health and Safety Code. Per Section 17 of H.B. 2174, the requirements of additional continuing education must be completed by September 1, 2021, for dentists who hold authorization to prescribe controlled substances issued before September 1, 2020.

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

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's implementation of legislative direction for the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §111.1, and the current Board rule does not specifically effect any geographic region of Texas. No expansion of applicability will occur by the adoption of this rule. Therefore, no new local economies will be effected by this rule amendment.

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

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

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

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

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Health and Safety Code §481.07635 (effective Sept. 1, 2019), which directs the Board to require a licensed dentist with the authority to prescribe controlled substances to complete at least two hours of continuing education related to approved procedures of prescribing and monitoring controlled substances.

This rule implements the requirements of H.B. 2174 of the 86th Legislature and Texas Health and Safety Code §481.07635.

§111.1. Additional Continuing Education Required.

(a) Effective until September 1, 2020, each [Eaeh] dentist who is permitted by the Drug Enforcement Agency to prescribe controlled substances shall complete every three years a minimum of two hours of continuing education in the abuse and misuse of controlled substances, opioid prescription practices, and/or pharmacology. This continuing education may be utilized to fill the continuing education requirements of annual renewal.

(b) Effective beginning September 1, 2020, each dentist who is permitted by the Drug Enforcement Agency (or any subsequent permitting authority authorized by state and federal law) to prescribe controlled substances must complete 2 hours of continuing education related to approved procedures of prescribing and monitoring controlled substances as outlined in paragraphs (1) - (3) of this subsection. These 2 hours of continuing education may be used to satisfy the recordkeeping continuing education requirements of §104.1 of this title (relating to Requirement). After completing the initial requirement, a dentist may, no more than once annually, take the course under this subsection to fulfill hours toward the recordkeeping continuing education requirement.

(1) For dentists authorized to prescribe controlled substances before September 1, 2020, the 2 hours of required continuing education must be completed no later than September 1, 2021.

(2) For dentists who are authorized to prescribe controlled substances on or after September 1, 2020, the 2 hours of required continuing education must be completed not later than the first anniversary after the person is issued an authorization to prescribe.

(3) For dentists who have surrendered the permit or authorization to prescribe controlled substances or have their permit or authorization to prescribe controlled substances revoked by any administrative, civil, or criminal proceeding, the requirements of paragraph (2) of this subsection shall apply to any new permit or authorization granted on or after September 1, 2020, regardless of whether the dentist previously satisfied the requirements 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.

Filed with the Office of the Secretary of State on September 30, 2019.

TRD-201903498

W. Boyd Bush, Jr.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 10, 2019

For further information, please call: (512) 305-8910



22 TAC §111.3

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §111.3, concerning prescription monitoring by dentists. This amendment will implement the requirements for accessing the prescription history of patients through the Prescription Monitoring Program (PMP) required by H.B. 3284 of the 86th Legislature and the requirements of Sections 481.0764 and 481.0768 of the Health and Safety Code. Per Section 12 of H.B. 3284, the requirements for querying a patient's PMP history prior to prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol are delayed until March 1, 2020.

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

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's implementation of legislative direction for the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §111.3, and the current Board rule does not specifically effect any geographic region of Texas. No expansion of applicability will occur by the adoption of this rule. Therefore, no new local economies will be effected by this rule amendment.

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

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does

not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

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

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Health and Safety Code §§481.0764, 481.0768 (effective Sept. 1, 2019), which directs the Board to require a licensed dentist to access PMP information with respect to the patient before prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol, and directs the Board to periodically update the applicable disciplinary guidelines concerning the inappropriate disclosure or use of PMP information.

This rule implements the requirements of H.B. 3284 of the 86th Legislature and Texas Health and Safety Code §§481.0764, 481.0768.

§111.3. Prescription Monitoring by the Dentist.

(a) Prior to prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol, a dentist shall access the patient's prescription drug history report through the Texas State Board of Pharmacy's Prescription Monitoring Program (PMP) Clearinghouse. Failure to do so is grounds for disciplinary action.

(b) The act described above in subsection (a) of this section may be performed by an employee or other agent of the dentist acting at the direction of the dentist so long as that employee or agent acts in compliance with HIPAA and the employee or agent only accesses information related to a particular patient of the dentist. The dentist is responsible for any unauthorized access by an employee or other agent.

(c) Exceptions: the act described above in subsection (a) of this section is not necessary if the patient has been diagnosed with cancer or is receiving hospice care and that status is clearly noted in the patient's record.

(d) It is not violation if the dentist makes a good faith attempt to comply with subsection (a) of this section but is unable to because circumstances outside the dentist's control and those circumstances are clearly noted in the patient's record.

(e) A dentist may not disclose or use the information obtained through the PMP Clearinghouse in a manner not authorized by Texas Health and Safety Code Chapter 481 or other applicable law. Improper disclosure or use of the information obtained from the PMP Clearinghouse may represent grounds for discipline under Texas Occupations Code §263.002(a)(3) and (a)(10), and the Board shall apply discipline pursuant to §107.206 of this title (relating to Public Actions of the Board) and the Board's disciplinary matrix.

(f) [(e)] The requirement contained in subsection (a) of this section [This rule] is effective on March 1, 2020 [September 1, 2019], in accordance with H.B. 3284 [2561] of the 86th [85th] Texas Legislature.

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 September 30, 2019.

TRD-201903499

W. Boyd Bush, Jr.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 10, 2019

For further information, please call: (512) 305-8910



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 100. IMMUNIZATION REGISTRY

25 TAC §§100.1 - 100.8, 100.10

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §§100.1 - 100.8 and 100.10, concerning the Texas Immunization Registry (registry).

BACKGROUND AND PURPOSE

DSHS offers the registry at no cost to all Texans. The registry is secure and confidential and safely consolidates and stores immunization records from multiple sources in one centralized system.

Texas law requires written consent by individuals to participate in the registry. Access to the registry records is for those who have authorization. Authorized organizations include health care providers, schools, and public health departments. The registry is part of an initiative to increase vaccine coverage across Texas.

This proposal is necessary to comply with H.B. 1256, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code, Chapter 161. The new law requires DSHS to establish a process to provide an employer of a first responder with direct access in the registry for verification of the first responder's immunization history. This process requires the prior written or electronic consent of the first responder. H.B. 1256 addresses concerns that some first responders may be unaware of their vaccination status and lack access to their immunization information, which could delay their ability to render aid during a declared disaster quickly and effectively.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §100.1 adds definitions for "individual" and "individual's legally authorized representative" to establish that both children and adults are consenting participants in the registry. In addition, the amendment updates the definitions of "child," "consent," "immediate family member," "immunization

history," "immunization record," "payor," and "vaccine" to refer to individuals rather than persons for consistency with current law. Finally, the amendment updates the definition of "first responder" to reflect the current definition of first responder in Texas Health and Safety Code, Chapter 161, Subchapter A, relating to Immunizations.

The proposed amendments to §§100.2 - 100.8, and 100.10 update references to "persons" and "minors" with references to "individuals" or "adults" and "children," update references to the "Immunization Branch" with references to the "Immunization Unit," and include electronic means of providing consent or notification.

The amendments update the use of terminology to replace references to persons or children and their parent, managing conservator, or legal guardian with references to individuals and their legally authorized representative. The replacement of person or child with individual reflects current law under Texas Health and Safety Code, Chapter 161, which expanded the registry from a child-only registry to a lifetime registry for children and adults.

The proposed amendment to §100.5(e)(2) adds an employer of a first responder to the list of entities to which DSHS is authorized to release data, subject to stated limitations. The first responder employer, with the written or electronic consent of the first responder, must access the data for verification of the first responder's immunization history.

FISCAL NOTE

Donna Sheppard, 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

DSHS 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 DSHS 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 DSHS;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand existing rules;
- (7) the proposed rules will increase 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

Donna Sheppard, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities. Participation in providing the new service described in the proposed rules is optional.

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 are necessary to protect the health, safety, and welfare of the residents of Texas; 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

Imelda Garcia, Associate Commissioner, Laboratory and Infectious Disease Services Division, has determined that for each year of the first five years the rules are in effect, the public benefit will be that employers of first responders and first responders will have increased access to immunization data in preparation for a disaster or a vaccine preventable disease outbreak.

Donna Sheppard, has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are affected by the proposed rules because those entities are being given the authority, but not required, to participate in using the registry and will not incur economic costs to participate.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to HHRulesCoordinationOffice@hpsc.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) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule 19R054" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code Chapter 161, 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 system, including by DSHS. Under Texas Health and Safety Code, Chapter 1001, the DSHS Commissioner is authorized to assist the Executive Commissioner in the development of rules relating to the matters with DSHS jurisdiction.

The amendments implement Texas Government Code, §531.0055 and Texas Health and Safety Code, §161.00708 and §161.008(d).

§100.1. *Definitions.*

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

(1) Child--An ~~The person~~ or individual younger than 18 years of age to whom a vaccine has been administered.

(2) Consent--A statement signed by an individual or the individual's legally authorized representative [a parent, managing conservator, or legal guardian] agreeing that the individual's [child's] immunization history can be included in the immunization registry and that the individual's [child's] immunization record may be released from the immunization registry.

(3) Data elements--The information:

(A) consistent with 42 U.S.C., §300aa-25, as amended, defined as the information a provider who administers a vaccine is required to record in a medical record, including:

(i) the date the vaccine is administered;

(ii) the type of vaccine administered, vaccine manufacturer and lot number;

(iii) the name, address, and if appropriate, the title of the provider administering the vaccine; and

(iv) any adverse or unexpected events for a vaccine; and

(B) relating to an immunization, antiviral, and/or other medication administered to prepare for a potential disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency or in response to a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(4) Department--The Department of State Health Services.

(5) Extraordinary Law Enforcement Emergency--Within the context of a public health emergency, a situation which requires extra staffing, overtime and/or extra-jurisdictional law enforcement forces.

(6) First Responder--As defined by Texas Health and Safety Code, §161.0001 [Government Code, §421.095].

(7) Health information exchange--A health information exchange organization as defined by Texas Health and Safety Code, §182.151.

(8) Hostile Military or Paramilitary Act--An attack or other use of force by an armed force of a nation or an organized unofficial group, against forces, property and/or infrastructure of the United States, state or local government.

(9) Immediate family member--The parent, spouse, child, or sibling of an individual [a person] who resides in the same household as the individual [person].

(10) Immunization history--An accounting of all vaccines that an individual [a person] has received, or evidence of immunity, and other identifying information.

(11) Immunization record--A record containing the name and date of birth of the individual [person] to whom a vaccine was administered; dates of vaccine administration; types of vaccine administered; and name and address of the provider that administered the vaccines; or other evidence of immunity to a vaccine-preventable disease.

(12) Immunization registry--The database or single repository that contains immunization histories, which include necessary personal data for identification. This database is confidential, and access to content is limited to authorized users.

(13) Individual--A child, or an adult 18 years of age or older, to whom a vaccine has been administered.

(14) Individual's legally authorized representative--As defined by Texas Health and Safety Code, §161.0001.

(15) ~~(13)~~ Payor--An insurance company, a health maintenance organization, or another organization that pays a health care provider to provide health care benefits, including the administration of vaccines to an individual [a person younger than 18 years of age].

(16) ~~(14)~~ Potential disaster--An incident or event capable of causing widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, or other public calamity requiring emergency action, or energy emergency.

(17) ~~(15)~~ Provider--Any physician, health care professional, or facility personnel duly licensed or authorized to administer vaccines.

(18) ~~(16)~~ Public health emergency--An occurrence or imminent threat of an illness or health condition, caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agent or biological toxin, that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. Such illness or health condition includes, but is not limited to, an illness or health condition resulting from a natural disaster.

(19) ~~(17)~~ Terrorist attack--An activity that is dangerous to human life and/or potentially destructive of critical infrastructure or key resources and is intended to intimidate or coerce the civilian population, or influence or affect the conduct of a government by mass destruction, assassination, and/or kidnapping.

(20) ~~(18)~~ User--An entity or person [individual] authorized by the department to access immunization registry data.

(21) ~~(19)~~ Vaccine--Includes toxoids and other immunologic agents which are administered to an individual [a person] to elicit an immune response (immunization) and thus protect against infectious diseases.

§100.2. Confidentiality.

(a) Except as provided by Texas Health and Safety Code, Chapter 161, Subchapter A, §161.00705, information that [individually] identifies an [a child or other] individual, and is received by the department for the immunization registry, is confidential and may be used by the department for registry purposes only. Unless specifically authorized by Texas Health and Safety Code, Chapter 161, Subchapter A, the department may not release immunization registry information to any person [individual] or entity without the electronic or written consent of the individual or the individual's legally authorized representative [person or, if a minor, the parent, managing conservator, or legal guardian].

(b) A [written] confidentiality statement shall be signed electronically by an authorized representative of the user of the registry. Any user of the immunization registry shall protect the confidentiality of all immunization histories, records, and reports. Immunization registry [Registry] information may only be accessed by [the] limited persons, and used for the limited stated purposes,

detailed at §100.5(e) of this title (relating to Receipt and Release of Immunization Registry Data). A person required to report information to the department for registry purposes or authorized to receive information from the immunization registry may not disclose [individually] identifiable information of an [a child or other] individual to any person [individual] or entity without the electronic or written consent of the individual or the individual's legally authorized representative [; if a child, the parent, managing conservator or legal guardian], or except as provided by the Texas Occupations Code, Chapter 159, or the Texas Insurance Code, §602.053 [Article 28B-04].

(c) Immunization registry [Registry] information is not subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity, except as provided by Texas Health and Safety Code, Chapter 161, Subchapter A, [-] Immunization registry [Registry] information is not admissible in any civil, administrative, or criminal proceeding.

§100.3. Informing a Child's Legally Authorized Representative [Parent, Managing Conservator, or Legal Guardian].

(a) A legally authorized representative [parent, managing conservator or legal guardian] of a child [patient younger than 18 years of age] shall be informed, via the methodology described at subsection (b) of this section, that the department has established and maintains an immunization registry for the primary purpose of establishing and maintaining a single repository of immunization records to be used in aiding, coordinating, and promoting efficient and cost-effective childhood vaccine-preventable disease prevention and control efforts.

(b) The department shall provide written materials and forms to providers for the purpose of informing legally authorized representatives [a parent, managing conservator or legal guardian] about the immunization registry and specific information collected in that registry.

(c) The department and providers may use the immunization registry to provide notices by mail, telephone, personal contact, or other electronic means to a child's legally authorized representative [parent, managing conservator or legal guardian] regarding the particular vaccines that the [his or her] child [who] may be due or overdue [for a particular vaccine] according to the department's immunization schedule.

(d) The first time the department receives immunization registry data[-] from a person or entity other than the child's legally authorized representative [parent, managing conservator or legal guardian], for a child for whom the department has received consent to be included in the immunization registry, the department shall send a written notice to the child's legally authorized representative [parent, managing conservator or legal guardian] disclosing:

(1) that providers and payors may be sending the child's immunization information to the department;

(2) the information that is included in the immunization registry;

(3) the entities or persons to whom the information may be released;

(4) the purpose of the immunization registry;

(5) the procedure to exclude a child from the immunization registry; and

(6) the procedure to report an alleged violation if a legally authorized representative [parent, managing conservator or legal guardian] discovers a child is included in the immunization registry after exclusion has been requested.

§100.4. Immunization Registry Consent and Withdrawal Relating to a Child [Minor].

(a) A child's legally authorized representative [~~parent, managing conservator or legal guardian of a patient younger than 18 years of age~~] may consent to the inclusion of the child's immunization history in the immunization registry by doing one of the following:

(1) indicating consent at birth certificate registration, including by electronic signature;

(2) submitting written notification to the department in a format prescribed by the department or substantially similar and mailed to the Department of State Health Services, Immunization Unit [~~Branch~~], MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Department of State Health Services, Immunization Unit [~~Branch~~], 1100 West 49th Street, MC-1946, Austin, Texas 78756, or by calling the Immunization Unit [~~Branch~~] at (800) 252-9152 to request a consent form;

(3) completing written or electronic consent to be submitted to a health care provider, birth registrar, regional health information exchange, or local immunization registry, who may review that consent and affirm that consent has been obtained via an affirmation process as directed by the department.

(b) Unless otherwise provided by §100.7 of this title (relating to Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event), the department shall verify consent before including the reported information regarding the child in the immunization registry. Under Texas Health and Safety Code, §161.007(a)(5), the department may elect to verify consent by receiving affirmation from a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained. The department shall provide notice to a provider that submits data elements for an individual [a person] for whom consent cannot be verified. The notice shall contain instructions for obtaining and affirming consent and resubmitting the data elements to the department.

(c) Consent is required to be obtained only one time, and is valid until the child becomes 18 years of age, unless the consent is withdrawn in writing.

(d) A legally authorized representative [~~parent, managing conservator or legal guardian~~] of a child [patient younger than 18 years of age] may withdraw consent for the child to be included in the immunization registry at any time by submitting written notification to the department in a format prescribed by the department or substantially similar and mailed to the Department of State Health Services, Immunization Unit [~~Branch~~], MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Department of State Health Services, Immunization Unit [~~Branch~~], 1100 West 49th Street, MC-1946, Austin, Texas 78756, or by calling the Immunization Unit [~~Branch~~] at (800) 252-9152 to request a consent withdrawal form. Unless otherwise provided by §100.7 of this title, the department shall remove information from the immunization registry for any individual [person] for whom consent has been withdrawn, and the department shall send the legally authorized representative [~~parent, managing conservator or legal guardian~~] a written confirmation of the removal of the information. The department may not retain [individually] identifiable information about any individual [person] for whom consent has been withdrawn except as provided for by §100.7 of this title.

(e) A legally authorized representative [~~parent, managing conservator or legal guardian~~] may request exclusion of a child's immunization history from the immunization registry by doing one of the following:

(1) indicating the request for exclusion at birth certificate registration, including by electronic signature; or

(2) submitting written notification to the department in a format prescribed by the department or substantially similar and mailed to the Department of State Health Services, Immunization Unit [~~Branch~~], MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Department of State Health Services, Immunization Unit [~~Branch~~], 1100 West 49th Street, MC-1946, Austin, Texas 78756, or by calling the Immunization Unit [~~Branch~~] at (800) 252-9152 to request an exclusion form. Unless otherwise provided by §100.7 of this title, on receipt of a written request to exclude a child's immunization records from the immunization registry, the department shall send the legally authorized representative [~~parent, managing conservator or legal guardian~~] a written confirmation of receipt of the request, and shall exclude the child's records from the immunization registry. The department may not retain individually identifiable information about any individual [person] for whom an exclusion has been requested, unless otherwise allowed under §100.7 of this title.

§100.5. Receipt and Release of Immunization Registry Data.

(a) The immunization registry must contain information on the immunization history obtained by the department under this chapter regarding:

(1) each individual [a person who is younger than 18 years of age and] for whom consent has been obtained;

(2) individuals [persons] immunized to prepare for or in response to an event under §100.7 of this title (relating to Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event); and

(3) first responders or [and/or] their immediate family members for whom a request has been submitted, as described at §100.8 of this title (relating to First Responder Immunization Information).

(b) The department may obtain the data constituting an immunization record for an individual [a person] from a public health district, a local health department, the individual or the individual's legally authorized representative [~~parent, managing conservator or legal guardian of a patient younger than 18 years of age~~], a physician, a payor, or from any health care provider licensed (or otherwise legally authorized) to administer vaccines. Submission of this information must be according to the procedures and in the format prescribed by the department.

(c) Except as provided by §100.7 and §100.8 of this title, the department shall verify consent before including information received under subsection (b) of this section in the immunization registry. The department may not retain [individually] identifiable information about an individual [a person] for whom consent cannot be verified.

(d) When the department verifies consent under subsection (c) of this section, it may do so by any of the following, at its discretion:

(1) manual or electronic review of the consent form document signed (including by electronic signature) by a legally authorized representative [~~parent, managing conservator or legal guardian~~] at birth certificate registration;

(2) manual or electronic review of a consent form signed by a legally authorized representative [~~parent, managing conservator or legal guardian~~] and submitted to the department by mail to the Department of State Health Services, Immunization Unit [~~Branch~~], MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Department of State Health Services, Immunization Unit [~~Branch~~], 1100 West

49th Street, MC-1946, Austin, Texas 78756 (consent forms may also be received by facsimile);

(3) affirmation by a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained, as described in Texas Health and Safety Code, §161.007(a)(5), and in a manner prescribed by the department.

(e) Except as limited by subsections (f) and (g) of this section, the department may release the data constituting an immunization record:

(1) to the individual or the individual's legally authorized representative [~~parent, managing conservator, and/or legal guardian of a person younger than 18 years of age~~]; and [~~and/or~~]

(2) to the following entities, with those entities subject to the stated limitations:

(A) a Texas public health district or a Texas local health department, for public health purposes within their areas of jurisdiction;

(B) a physician or any health care provider licensed (or otherwise legally authorized) to administer vaccines in Texas, for treating the individual [~~child~~] as a patient;

(C) a Texas school or Texas child care facility, for an individual [~~a child~~] enrolled in that school or child care facility;

(D) a payor currently authorized by the Texas Department of Insurance to operate in Texas, for immunization records related to the specific person in Texas covered under the payor's policy; [~~and/or~~]

(E) a state agency having legal custody of an individual; and [~~a child~~]

(F) an employer of a first responder, with the prior written or electronic consent of the first responder, for verification of the first responder's immunization history.

(3) Direct electronic access to the immunization registry information shall be limited to entities described in paragraph (2) of this subsection, for use under the stated limitations and subject to registration and access requirements as provided by the department.

(f) For individuals [~~persons~~] immunized to prepare for, or in response to, an event covered by §100.7 of this title, the department may release information from the immunization registry as provided in §100.7(f) of this title.

(g) For first responders or [~~and/or~~] their immediate family members 18 years of age or older, the department may release information from the immunization registry as provided in §100.8(e) of this title.

(h) Texas Health and Safety Code, §161.0105, provides limited liability protections, as described in those provisions.

(i) The department may release nonidentifying summary statistics related to the immunization registry that do not individually identify an individual.

§100.6. Reporting to the Immunization Registry, and Medical Verification, relating to a Child [Minor].

(a) Data elements regarding an immunization record provided to the department under this section, whether electronically or by other means, shall be submitted in a format and manner prescribed by the department.

(b) Except as otherwise provided by §100.7 of this title (relating to Potential and Declared Disasters, Public Health Emergency,

Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event), a health care provider who administers an immunization to a child [~~person younger than 18 years of age~~] shall provide data elements regarding an immunization to the department within 30 days of administration of the vaccine.

(c) A payor that receives data elements from a provider who administers an immunization to a child [~~person younger than 18 years of age~~] shall provide the data elements to the department within 30 days of receipt of the data elements from a provider.

(d) A child's legally authorized representative [~~parent, managing conservator or legal guardian~~] may provide evidence of a child's immunization history directly to the department for inclusion in the immunization registry. The department shall ensure that the immunization history submitted by a child's legally authorized representative [~~parent, managing conservator or legal guardian~~] is medically verified immunization information by requiring the child's legally authorized representative [~~parent, managing conservator or legal guardian~~] to submit evidence that includes a copy of one or more of the following:

(1) the child's medical record indicating the immunization history and including a provider's signature and the name and address of the provider;

(2) a vaccine-specific invoice from a health care provider for the immunization;

(3) vaccine-specific documentation showing that a claim for the immunization was paid by a payor;

(4) an immunization record signed by a school official; or

(5) an immunization history provided by a local or state immunization registry.

(e) A provider shall, upon request of the department, provide additional information to clarify data elements submitted to the department.

(f) The department shall provide instruction and education to providers about the immunization registry provider application and enrollment process and expedite processing of provider applications.

§100.7. Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event.

(a) The immunization registry shall contain information regarding individuals [~~persons~~] who receive an immunization, antiviral, or [~~and/or~~] other medication administered:

(1) to prepare for a potential disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or [~~and/or~~] an extraordinary law enforcement emergency event, as those terms are defined in §100.1 of this title (relating to Definitions);

(2) in response to a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action or [~~and/or~~] extraordinary law enforcement emergency event, as those terms are defined in §100.1 of this title.

(b) A health care provider who administers an immunization, antiviral, or [~~and/or~~] other medication as described in subsection (a) of this section shall provide the data elements to the department, within 30 days of that medical treatment, in a format and manner prescribed by the department.

(c) The department shall track, in the immunization registry, adverse reactions to an immunization, antiviral, or [~~and/or~~] other medication administered as described in subsection (a) of this section. A health care provider who administers such an immunization, antiviral,

or ~~and/or~~ other medication may provide data related to adverse reactions to the department, in a format and manner prescribed by the department, for inclusion in the immunization registry. Department tracking will be based on the reports it receives under this subsection.

(d) Unless consent is obtained and verified, the individually identifiable information collected in the immunization registry under this section shall only be retained in the immunization registry for a period of five [5] years following the end of the event as described in subsection (a) of this section. The end date of these occurrences shall be as specifically provided for by law. In the absence of law which specifically determines the end date, the department shall determine such an end date and post that date on its website.

(e) An adult or an individual's legally authorized representative [~~individual or, if a child, the child's parent, managing conservator or legal guardian,~~] may consent in writing to the continued inclusion of the individual's [person's] information collected under this section in the immunization registry past the retention time period specified in subsection (d) of this section by:

(1) mailing (or faxing) written or electronic notification to the department, in a format prescribed by the department, at: Department of State Health Services, Immunization Unit [~~Branch~~], MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Department of State Health Services, Immunization Unit [~~Branch~~], 1100 West 49th Street, MC-1946, Austin, Texas 78756, (a consent form may be obtained by calling the Immunization Unit [~~Branch~~] at (800) 252-9152, or online at <https://www.dshs.texas.gov/immunize/immtrac/www.ImmTrae.com>); or

(2) completing a consent form document, which must be verified by affirmation by a health care provider in a manner prescribed by the department.

(f) The department may release the information collected in the immunization registry under this section with consent of the adult or an individual's legally authorized representative [~~individual or, if a child, the child's parent, managing conservator or legal guardian,~~] or to a state agency or health care provider for:

(1) the purposes outlined in Texas Health and Safety Code, Chapter 161, Subsection A; or ~~and/or~~

(2) the purpose of aiding and coordinating communicable disease prevention and control efforts during an event as described in subsection (a) of this section.

§100.8. *First Responder Immunization Information.*

(a) An adult [A person] 18 years of age or older who is a first responder or an immediate family member of a first responder may request that a health care provider who administers an immunization to the adult [person] provide the data elements regarding the immunization to the department for inclusion in the immunization registry.

(b) A health care provider, on receipt of a request under subsection (a) of this section, shall submit the data elements to the department within 30 days of administration of the vaccine in a format and manner prescribed by the department. The department shall verify the request before including the information in the immunization registry. The department may elect to verify the request for inclusion in the immunization registry by obtaining an affirmation from the health care provider that a request has been received.

(c) An adult [A person] 18 years of age or older who is a first responder or an immediate family member of a first responder may request inclusion of that adult's [person's] immunization history in the immunization registry by:

(1) mailing written or electronic notification to the department, in a format prescribed by the department, at: Department of State Health Services, Immunization Unit [~~Branch~~], MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Department of State Health Services, Immunization Unit [~~Branch~~], 1100 West 49th Street, MC-1946, Austin, Texas 78756, (a request form may be obtained by calling the Immunization Unit [~~Branch~~] at (800) 252-9152, or online at <https://www.dshs.texas.gov/immunize/immtrac/www.ImmTrae.com>); or

(2) completing a written request to the adult's [person's] health care provider, to be verified by affirmation (in a manner prescribed by the department) by the health care provider that such a request has been received.

(d) The department shall ensure that the immunization history submitted by the adult 18 years of age or older who is a first responder or an immediate family member of a first responder [~~individual~~] under subsection (c)(1) of this section is medically verified immunization information by requiring the adult 18 years of age or older who is a first responder or an immediate family member of a first responder [~~individual~~] to submit evidence that includes a true and accurate copy of one or more of the following:

(1) the adult's [individual's] medical record indicating the immunization history and including a provider's signature and the name and address of the provider;

(2) a vaccine-specific invoice from a health care provider for the immunization;

(3) vaccine-specific documentation showing that a claim for the immunization was paid by a payor;

(4) an immunization record signed by a school official; or

(5) an immunization history provided by a local or state immunization registry.

(e) The department may release the information collected in the immunization registry under this section with consent of the adult [~~individual~~] or to any health care provider licensed or otherwise authorized to administer vaccines.

(f) An adult [A person] whose immunization records are included in the immunization registry under this section may send a written or electronic request [~~in writing~~] that the department remove the information from the immunization registry. The department shall remove the adult's [person's] immunization records from the immunization registry not later than the 10th day after receiving a request.

§100.10. *Complaints.*

(a) An adult or an individual's legally authorized representative [A person] may file a complaint with the department related to the department's alleged failure to comply with a request for exclusion of an individual from the immunization registry by mailing such a complaint to: Manager, Department of State Health Services, Immunization Unit [~~Branch~~], MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Manager, Immunization Unit [~~Branch~~], Department of State Health Services, 1100 West 49th Street, MC-1946, Austin, Texas 78756; or by e-mail to the attention of Manager, Immunization Unit [~~Branch~~] at feedback.ImmDirector@dshs.state.tx.us. The department shall respond to the written complaint within 30 days after [~~of that~~] receipt of that complaint.

(b) An adult or an individual's legally authorized representative [A person] may report an incident of discrimination for requesting exclusion of an individual from the immunization registry, or for using an exemption for a required immunization, by mailing written

notification to: Manager, Department of State Health Services, Immunization Unit [Branch], MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Manager, Immunization Unit [Branch], Department of State Health Services, 1100 West 49th Street, MC-1946, Austin, Texas 78756; or by e-mail to the attention of Manager, Immunization Unit [Branch] at feedback.ImmDirector@dshs.state.tx.us. The department shall respond to the written notification within 30 days after [e] receipt of that notification.

(c) The department shall report to the Legislative Budget Board, the governor, the lieutenant governor, the speaker of the House of Representatives, and appropriate committees of the legislature not later than September 30 of each even-numbered year. The report shall:

(1) include the number of complaints received by the department related to the department's alleged failure to comply with requests for exclusion of individuals from the immunization registry;

(2) identify all reported incidents of discrimination for requesting exclusion of individuals from the immunization registry or for using an exemption for a required immunization;

(3) include the number of complaints received by the department related to the department's alleged failure to remove information from the immunization registry as required by §100.7 of this title (relating to Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event) after an event described in that section; and

(4) include the number of complaints received by the department related to the department's alleged failure to comply with written requests for the removal of information relating to first responders and their immediate family under §100.8 of this title (relating to First Responder Immunization Information).

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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Barbara L. Klein

General Counsel

Department of State Health Services

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For further information, please call: (800) 252-9152



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 4. CONSUMER ASSISTANCE; CLAIM PROCESSES

28 TAC §§5.4203, 5.4204, 5.4211, 5.4222, 5.4241

The Texas Department of Insurance (TDI) proposes new 28 TAC §5.4204 and amendments to 28 TAC §§5.4203, 5.4211, 5.4222, and 5.4241. The proposed new section and amendments clarify the deadlines related to supplemental payments on Texas Windstorm Insurance Association (TWIA) claims. The amendments also reflect statutory changes for replacement cost payment requests and changes in how long the Commissioner can extend deadlines in the claims process. The new section and amendments are necessary to implement Senate Bill 615, House Bill 1900, and House Bill 1944, all enacted by the 86th Legislature, Regular Session (2019). The amendments also add a definition of "good cause" to clarify existing rules for extending deadlines related to appraisal and mediation.

EXPLANATION. SB 615 requires the Commissioner to adopt rules related to supplemental payments. The rules must:

--clarify deadlines related to supplemental payments; and

--ensure that a supplemental payment request will not impair a policyholder's right to appraisal.

SB 615 also requires TWIA to give notices that describe the supplemental payment process and related deadlines.

HB 1900 creates deadlines for claimants to request a replacement cost payment and demand appraisal of the replacement cost amount. It also requires TWIA to give notices about the deadlines when it accepts a claim and when it responds to a replacement cost payment request.

HB 1900 and HB 1944 also change the limit on how long the Commissioner can extend deadlines in the claims process.

Section 5.4203. Good Cause Extensions for Insurance Code §2210.573(b) and (d) and §2210.5741(b). Section 5.4203 is amended to include conforming references to new Insurance Code §2210.5741(b), enacted by HB 1900, which sets deadline and notice requirements for TWIA's response to a replacement-cost payment request.

The change to §5.4203(c)(3)(B) clarifies that extension requests must identify the period during which the event occurred. This will help ensure that TWIA submits requests that TDI can act on without needing to request additional information.

The text in §5.4203(e) is replaced to implement HB 1900's changes to the limits on deadline extensions. The 120-day limit now just applies to deadlines that apply only to TWIA. The limit also now applies to claims arising from the same occurrence, rather than from the same catastrophe year.

Section 5.4204. Supplemental Payments. Section 5.4204 is necessary to implement requirements in SB 615 to adopt rules that clarify deadlines related to supplemental payments and ensure that a request for supplemental payment will not impair the right to appraisal. The new section does so by:

--making the deadline to request supplemental payments the same as the appraisal deadline, but

--allowing a claimant who timely requests appraisal to request a supplemental payment at any time.

SB 615 contemplates that there are deadlines for supplemental payments. When claimants disagree with the amount TWIA will pay for the accepted part of a claim, TWIA's practice has been to notify claimants of their right to appraisal but also to encourage them to first try to resolve the disagreement informally by requesting a supplemental payment. If a claimant and TWIA

agree on a supplemental payment, both sides can avoid the time and expense of appraisal.

It is reasonable to align the deadline to request supplemental payments with the statutory deadline to demand appraisal. Both appraisal and the supplemental payment process are ways to resolve a disagreement about the amount of loss on the accepted part of a claim. The appraisal deadline is the statutory deadline to raise a disagreement about that amount. The supplemental payment process gives the parties a chance to resolve the disagreement without using appraisal. Having a single deadline adds clarity to the process and will reduce potential claimant confusion that could occur with multiple deadlines.

New §5.4204 also helps ensure that a supplemental payment request will not impair the claimant's right to appraisal. Claimants who want to focus on requesting a supplemental payment to resolve a disagreement might accidentally miss the deadline to demand appraisal. To help prevent this, the new section clarifies that claimants can preserve their right to appraisal and still have the opportunity to resolve the disagreement through the supplemental payment process.

Section 5.4211. Appraisal Process. Section 5.4211 is amended to:

- ensure the appraisal process includes information about the opportunity to request a supplemental payment;
- ensure that the rules clarifying the supplemental payment process deadlines do not impair a claimant's right to appraisal; and
- reflect changes in HB 1900 regarding replacement cost payment requests.

For the reasons described in the explanation for new §5.4204, the deadline to request supplemental payments is aligned with the existing statutory deadline to demand appraisal. Section 5.4211(b) is amended to require TWIA to add information about supplemental payments to the appraisal information it already must give claimants under Insurance Code §2210.573(d) and HB 1900. The information about supplemental payments is needed to implement SB 615 and will help ensure clear understanding of the deadlines related to those payments.

To help ensure that the rules clarifying the supplemental payment process deadlines do not impair claimants' right to appraisal, current subsection §5.4211(c) is redesignated as subsection (d), and a new subsection(c) is proposed to define what constitutes an appraisal demand and clarify that appraisal begins when the claimant hires an appraiser.

Specifically, §5.4211(c) provides that a claimant can demand appraisal by "telling TWIA that the claimant disagrees with the amount of loss TWIA will pay for the accepted portion of the claim." Any disagreement over the amount of loss, including asking for additional money, is an "appraisal demand." Defining an appraisal demand this way protects both the right to appraisal and the ability to pursue a supplemental payment.

To help ensure clear communication about the deadline for appraisal and supplemental payment requests, §5.4211(c) requires TWIA to acknowledge an appraisal demand within 10 days of receipt. This is already TWIA's practice. In the appraisal demand acknowledgment, TWIA must again explain the appraisal and supplemental payment request processes.

New §5.4211(i) requires TWIA to send an appraisal deadline reminder, which will help ensure that the right to appraisal is not

impaired. More specifically, for claimants who have only actual cash value coverage on all or part of a damaged structure, TWIA must remind the claimant of appraisal and supplemental payment deadlines if the claimant has not demanded appraisal by a certain time before the deadline. The actual cash value coverage notice will also help reduce the potential for confusion about deadlines.

This requirement will apply beginning June 1, 2021. The additional time will allow TWIA to automate the reminder notice, which will help ensure compliance and not require TWIA to incur the time and expense of manually identifying applicable claims.

TDI does not propose requiring the reminder notice for claims with replacement cost coverage. Those claimants will have an opportunity to demand appraisal and receive similar information about the deadlines when they request a replacement cost payment under Insurance Code §2210.5741. Requiring a reminder notice for claims with replacement cost coverage would likely be of minimal benefit to the claimants.

Sections 5.4211(a) and 5.4211(b) are also amended, and new §5.4211(c) is added, to provide for appraisal process rules to apply when the claimant disputes the amount of loss TWIA will pay for replacement cost coverage on the accepted portion of a claim. Those changes are made to reflect provisions in HB 1900 concerning replacement cost payment requests, including the opportunity to demand appraisal under Insurance Code §2210.5741. New §5.4211(c) also clarifies that claimants have the flexibility to resolve a disagreement about the replacement cost loss amount before making repairs. Claimants who receive a contractor's estimate that is higher than TWIA's replacement cost estimate may want to resolve the disagreement before work begins.

Finally, for consistency, in §5.4211(d), the phrase "select an appraiser" is changed to "hire an appraiser." The word "hire" appears elsewhere in §5.4211.

Section 5.4222. Appraisal Process - Extension of Deadlines. Section 5.4222 is amended to provide that deadlines related to appraisal can be extended without limit. It also clarifies:

- what is considered good cause for granting an extension; and
- the Commissioner's ability to extend deadlines for multiple groups of claims or in the absence of a request.

Amending §5.4222 is necessary to implement HB 1900's changes to how long the Commissioner can extend deadlines in the claims process, including deadlines related to appraisal. HB 1900 removes the limit on how long the Commissioner can extend a deadline imposed on a claimant, or on both a claimant and TWIA. The appraisal process does not have any deadlines that apply only to TWIA. Appraisal is a shared dispute-resolution process that requires coordination between the parties, their respective appraisers, and sometimes an umpire. As part of a shared process, deadlines should be considered applicable to both a claimant and TWIA for the purpose of allowing the Commissioner to grant deadline relief.

Amending §5.4222 also clarifies when there is good cause for an extension, whether an extension can apply to more than one claim, and whether the Commissioner can extend a deadline in the absence of a request. Adding a definition of "good cause" gives TWIA and claimants a clearer understanding of the requirements for an extension. The definition provides a reasonable, objective standard that is consistent with the good cause standard used for the extension of other deadlines in the claims

process, including extensions under §5.4202 (for the claim-filing deadline) and §5.4203 (for TWIA's deadlines to request claim-related information or to accept or deny a claim).

Clarifying that the Commissioner can extend deadlines for groups of claims or in the absence of a request gives more efficiency and flexibility to grant deadline relief. When there is good cause to extend a deadline for many claims, the Commissioner will be able to grant relief without waiting for requests on a claim-by-claim basis.

5.4241. Mediation Process - Deadlines and Extensions. Section 5.4241 is amended to provide that most deadlines related to mediation can be extended without limit. Deadlines that apply only to TWIA--the deadlines to request mediation, give claimants a notice explaining the mediation process, and inform TDI when a mediator is selected from a panel--are subject to the 120-day aggregate limit on extensions for claims arising from the same occurrence. The amendments keep the restriction that the Commissioner may not extend a mediator's deadline to notify the parties that the mediator is insured by TWIA.

Amending §5.4241 is necessary to implement HB 1900's changes to how long the Commissioner can extend deadlines in the claims process, including deadlines related to mediation. HB 1900 removes the limit on how long the Commissioner can extend a deadline imposed on a claimant, or on both a claimant and TWIA. Mediation is a shared dispute-resolution process that requires coordination between both sides and a mediator. As part of a shared process, most deadlines should be considered applicable to both a claimant and TWIA for the purpose of allowing the Commissioner to grant deadline relief. To conform to HB 1900, the rule keeps a limit on the extension of deadlines that apply only to TWIA.

Section 5.4241 also clarifies what is considered good cause for granting an extension and the Commissioner's authority to extend deadlines for groups of claims.

Adding a definition of good cause gives TWIA and claimants a clearer understanding of the requirements for an extension. The definition provides a reasonable, objective standard that is consistent with the good cause standard used for the extension of other deadlines in the claims process, including extensions under §5.4202 (for the claim-filing deadline) and §5.4203 (for TWIA's deadlines to request claim-related information or to accept or deny a claim).

Clarifying the Commissioner's authority to extend deadlines for groups of claims will make TWIA and claimants aware that the Commissioner can grant relief without waiting for requests on a claim-by-claim basis.

In addition to the changes discussed above, the proposed amendments include nonsubstantive editorial and formatting changes to conform to the agency's current style and to improve the rule's clarity.

TDI posted an informal working draft of the rule text on TDI's website on July 18, 2019. At TDI's request, TWIA posted a link to the draft on TWIA's website and used social media to publicize TDI's request for comments on the draft. TDI received public comments on the draft and considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed new section and amendments are in ef-

fect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statutes. The proposed amendments do not add to or decrease state revenues or expenditures, and local governments are not involved in enforcing or administering the proposed amendments.

Ms. Baker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new section and amendments are in effect, Ms. Baker expects that enforcing and administering the proposed new section and amendments will have the public benefits of ensuring that the rules implement claim-related provisions in SB 615, HB 1900, and HB 1944.

The proposed rules clarify the deadlines related to supplemental payments by connecting the deadline for supplemental payment requests to the appraisal demand deadline, and by defining what constitutes an appraisal demand. The proposed rules require TWIA to acknowledge appraisal demands and provide claimants with information about supplemental payment and appraisal processes. Claimants will be able to dispute TWIA's estimates but will not need to immediately hire an appraiser. The proposed rules also state how provisions on claim-related deadlines will apply to appraisers, appraisal umpires, and mediators, which will reduce the risk of confusion on the issue later.

The proposed rules also incorporate and clarify:

--the Commissioner's added flexibility to grant extensions to claim-related deadlines under Insurance Code Chapter 2210, Subchapter L-1; and

--new deadlines and procedures in HB 1900 for requesting replacement cost payments.

Together, the statutes and the proposed rules will better enable policyholders to obtain all the benefits they are entitled to under their policies, without unnecessary confusion and costs.

The only costs imposed by the proposed new section and amendments beyond the requirements in SB 615 and HB 1900 are the costs TWIA will incur to send a deadline reminder notice to certain policyholders who have not yet demanded appraisal. TWIA estimates the cost to implement the required notice by June 1, 2021, will be about \$40,000. TWIA will also incur modest printing and postage expenses, which depend on the number of affected claims. According to TWIA, this requirement would have affected about 1,600 claims if it had been in place for Hurricane Harvey.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

TDI has determined that the proposed new section and amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. As specified in the Public Benefit and Cost Note section of this proposal, the proposed changes will have a small economic impact on TWIA. TWIA is not a small or micro business or a rural community as defined in Government Code §2006.001. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a cost on a regulated person, TWIA. However, no additional rule

amendments are required under Government Code §2001.0045 because the proposed new 28 TAC §5.4204 and amendments to 28 TAC §§5.4203, 5.4211, 5.4222, and 5.4241 are necessary to implement HB 1900 and SB 615.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new section and amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create new regulations to clarify deadlines related to supplemental payments and ensure that supplemental payment requests will not impair the right to appraisal;
- will expand regulation of the extension of claim-related deadlines to reflect statutory changes concerning replacement cost payment requests and how long the Commissioner can extend deadlines. It will also expand regulation of the appraisal process to incorporate statutory changes concerning replacement cost payment requests;
- will not limit or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on November 12, 2019. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will also consider written and oral comments on the proposal in a public hearing under Docket No. 2816 at 1:00 p.m., central time, on October 28, 2019, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

STATUTORY AUTHORITY. TDI proposes new §5.4204 and amended §§5.4203, 5.4211, 5.4222, and 5.4241 under Insurance Code §§2210.5732, 2210.581, and 36.001.

Section 2210.5732 requires the Commissioner to adopt rules clarifying the deadlines related to supplemental payments. The rules must ensure that a supplemental payment request will not impair a policyholder's right to appraisal.

Section 2210.581 allows the Commissioner to extend deadlines established under Subchapter L-1. Section 2210.581, as amended by HB 1900 and HB 1944, gives TDI authority to adopt

rules necessary to implement the section. The amendments provide that deadlines applicable to a claimant, or to both a claimant and TWIA, can be extended an unlimited number of days by rule. Deadlines applicable only to TWIA can be extended, in aggregate, not more than 120 days.

Section 36.001 provides that the Commissioner can adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. New §5.4204 and the amendments to §5.4211 implement Insurance Code §2210.5732.

New §5.4204 and the amendments to §§5.4203, 5.4211, 5.4222, and 5.4241 implement Insurance Code §2210.581.

§5.4203. Good Cause Extensions for [under] Insurance Code §2210.573(b) and (d) and §2210.5741(b).

(a) This section defines "good cause" for the purpose of extending the deadlines in Insurance Code §2210.573(b) and (d) and §2210.5741(b) [relating to the association's request for claim-related information and the association's acceptance or denial of a claim; respectively]. In this section, "good cause" means objective facts beyond the association's control that reasonably caused or may cause the association to fail to meet a deadline in Insurance Code §2210.573(b) or (d) or §2210.5741(b).

(b) If the association shows good cause in a request for an extension, or in the absence of a request, if the Commissioner determines good cause exists, the Commissioner may, consistent with subsection (e) of this section, extend the deadlines established under Insurance Code §2210.573(b) and (d) and §2210.5741(b). An extension granted under this section is effective on the date of the deadline for which it is granted. An extension is limited to the claims for which it is granted.

(c) A request for an extension under this section must:

(1) be sent in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department);

(2) specify the deadline or deadlines for which an extension is requested;

(3) identify the claims for which an extension is requested by:

(A) the type of policy; and

(B) the time period during which the event occurred and a description of the event that gave rise to the claims;

(4) specify the association's estimated total number of claims arising from the event that gave rise to the claims for which an extension is requested;

(5) describe the good cause for which the association cannot meet the deadlines in Insurance Code §2210.573(b) and (d) and §2210.5741(b); and

(6) if the association requests a specific amount of time, provide an explanation for the [amount of] time requested.

(d) In addition to the information described in subsection (c) of this section, the Commissioner may use any other information the Commissioner deems appropriate when determining if good cause exists to extend the deadlines in Insurance Code §2210.573(b) and (d) and §2210.5741(b).

(e) For deadlines under this section and Insurance Code Chapter 2210, Subchapter L-1 that apply only to the association, the Com-

missioner may not extend the deadlines more than 120 days in the aggregate for claims arising from the same occurrence.

~~[(e) With reference to claims filed during a particular catastrophic year, extensions under this section and any other extension granted under Insurance Code §2210.581, relating to the extension of claim-handling deadlines, may not exceed 120 days in the aggregate.]~~

(f) This section applies to the remaining term of association policies ceded to an insurer under the assumption reinsurance depopulation program in Insurance Code Chapter 2210, Subchapter O. If one of these insurers seeks a deadline extension under this section, the insurer must comply with subsections (a) - (c) of this section, as though it were the association. This section does not apply to a policy renewed under Insurance Code §2210.703.

§5.4204. Supplemental Payments.

A claimant who timely demands appraisal under Insurance Code §2210.574 or §2210.5741 may request a supplemental payment on the accepted claim or accepted portion of the claim at any time. A claimant who does not timely demand appraisal may not request a supplemental payment after the deadlines for demanding appraisal under Insurance Code §2210.574 or §2210.5741.

§5.4211. Appraisal Process.

(a) Applicability. This section and §§5.4212 - 5.4222 [Sections 5.4211 - 5.4222] of this title describe [are] the appraisal process and apply when:

(1) the association has accepted coverage for a claim, in full or in part; and

(2) the claimant disputes the amount of loss the association will pay for the accepted portion of the claim within the time allowed by Insurance Code §2210.574 or §2210.5741.; ~~and]~~

~~[(3) the claimant demands an appraisal under the association policy within the time frame allowed by Insurance Code §2210.574.]~~

(b) Appraisal explanation. The association must include an explanation of the appraisal process, and the process for requesting a supplemental payment, with each [the] notice either:

(1) accepting [or denying] coverage under Insurance Code §2210.573, or[-]

(2) stating the amount of the replacement cost payment the association will make in response to a request under §2210.5741.

(3) The explanation must include the deadlines for demanding appraisal and requesting a supplemental payment.

(c) Appraisal demand.

(1) A claimant may demand appraisal under Insurance Code §2210.574 or §2210.5741 by telling the association that the claimant disagrees with the amount of loss the association will pay for the accepted portion of the claim. A disagreement includes asking for additional money or telling the association that the amount may not be enough.

(2) A claimant may demand appraisal under Insurance Code §2210.5741:

(A) at any time after the claimant receives the claim acceptance notice described in Insurance Code §2210.573(d)(1) or (2), but not later than the 30th day after the date the claimant receives the replacement cost notice described by Insurance Code §2210.5741(b);

(B) if the claimant has not demanded appraisal on the claim under Insurance Code §2210.574; and

(C) regardless of whether repairs are complete.

(3) If the association receives an appraisal demand from a claimant, the association must, in writing, acknowledge the appraisal demand not later than the 10th day after the date of receipt.

(4) The acknowledgment of an appraisal demand must include an explanation of the:

(A) appraisal process, including that the process begins when the claimant hires an appraiser; and

(B) process for requesting a supplemental payment, including the opportunity to seek a supplemental payment before the appraisal process begins.

(d) ~~[(e)]~~ Appraiser selection. The association and the claimant must each hire [select] an appraiser who is independent and qualified under §5.4212 of this title (relating to Appraisal Process - Appraiser Qualifications and Conflicts of Interest).

(e) ~~[(d)]~~ Appraiser fee information. No later than five days after hiring an appraiser, each party must tell the other party the fees to be charged by the appraiser.

(f) ~~[(e)]~~ Umpire selection.

(1) The appraisers must select an umpire who is independent and qualified under §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest).

(2) If the appraisers are unable to agree on an umpire, either appraiser may ask [request] the department to select an umpire. The appraiser must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must include the following information:

(A) the type of policy;

(B) a description of the claim and, if known, the claimed value of the covered loss;

(C) the association's claim acceptance letter, including the amount the association will pay for the loss; and

(D) any other information that the department requests.

(g) ~~[(f)]~~ Umpire participation. The selected umpire must participate in the resolution of the dispute if the appraisers fail to agree on a decision.

(h) ~~[(g)]~~ Decision. If the appraisers agree on the amount of loss, their decision is binding on the parties as to the amount of loss the association will pay for the claim. If the parties cannot agree, and the umpire participates, an itemized decision agreed to by any two of these three is binding on the parties as to the amount of loss the association will pay for the claim. Parties may challenge the decision only as permitted by Insurance Code §2210.574.

(i) Notice for actual cash value coverage. The association must send a notice to the claimant for each accepted claim for damage to a structure, or part of a structure, on which the claimant has only actual cash value coverage and appraisal has not been demanded.

(1) The association must send the notice not earlier than the 45th day before but not later than the 30th day before the deadline to demand appraisal under §2210.574.

(2) The notice must inform the claimant that:

(A) appraisal has not been demanded; and

(B) if the claimant disagrees with the amount the association will pay for the accepted part of the claim or thinks the amount

may not be enough, the claimant must tell the association before the appraisal deadline. If the claimant does not tell the association before the deadline, the claimant cannot ask for a supplemental payment after the deadline passes.

(C) The notice must also inform the claimant of the deadline for demanding appraisal and requesting a supplemental payment.

(3) The association is required to send the notice only one time, unless the department extends the appraisal deadline after the association sends the notice.

(4) This subsection is applicable beginning June 1, 2021.

§5.4222. *Appraisal Process - Extension of Deadlines.*

(a) Extensions. For good cause, the Commissioner [eommissioner] may extend any deadline [in this division] related to appraisal, except the deadline for the umpire to notify the parties that the umpire is insured by the association, under §5.4218 of this title (relating to Appraisal Process - Umpire Obligations).

(b) Good cause. This section defines "good cause" for the purpose of extending the deadlines related to appraisal. In this section, "good cause" means objective facts beyond a party's, appraiser's, or umpire's control that reasonably caused or may cause the party, appraiser, or umpire to fail to meet a deadline related to appraisal.

(c) [(b)] Request for extension. To ask [request] the Commissioner [eommissioner] to extend a deadline, a party, appraiser, or umpire must send the request in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must explain the good cause for the extension. Good cause includes military deployment of the claimant. In the absence of a request, the Commissioner may extend a deadline if the Commissioner determines good cause exists.

(d) [(e)] Extension limit. For purposes of Insurance Code §2210.581(b), all deadlines related to appraisal--including those for appraisers and umpires--are considered applicable to the claimant or to both the claimant and the association. The deadlines are not subject to an extension limit. [Deadline extensions may not exceed an aggregate of 120 days. This limit does not apply to extensions of the deadline to file an objection because an umpire is insured by the association.]

(e) The Commissioner may extend deadlines for a single claim or a group of claims.

§5.4241. *Mediation Process - Deadlines and Extensions.*

(a) Deadline. Mediation must be completed by the 60th day after the association notifies the claimant that the association is requesting mediation, unless the deadline is extended. If the association does not ask the department to select a mediator before the 60-day deadline, or any extension of that deadline, the association waives its right to require mediation under Insurance Code §2210.575 and this division.

(b) Good cause. This section defines "good cause" for the purpose of extending the deadlines related to mediation. In this section, "good cause" means objective facts beyond a party's or mediator's control that reasonably caused or may cause the party or mediator to fail to meet a deadline related to mediation.

(c) [(b)] Extensions.

(1) The association and the claimant may agree to extend the 60-day deadline for mediation in subsection (a) of this section.

[(2) If the commissioner extends the 60-day deadline in subsection (a) of this section, the extension must comply with the 120-day limit in Insurance Code §2210.581(b).]

(2) [(3)] For good cause, the Commissioner [eommissioner] may extend any deadline [in this division] related to mediation, except the deadline for the mediator to notify the parties that the mediator is insured by the association, under §5.4236 of this title (relating to Mediation Process - Mediator Obligations); may not be extended].

(3) The Commissioner may extend deadlines for a single claim or a group of claims.

(d) [(e)] Lawsuit. If mediation is not complete by the 60-day deadline or an extension, the claimant may file suit.

(e) [(4)] Request for extension. To request the Commissioner [eommissioner] to extend a deadline, a party or mediator must send the request in writing to the department, under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must explain the good cause for the extension. Good cause includes military deployment of the claimant.

(f) [(e)] Extension limit. The extension of deadlines under Insurance Code §2210.575(c); the extension of deadlines under §5.4231(b) and §5.4235(f) of this title (relating to Mediation Process and Mediation Process - Mediator Selection by the Department); and the extension of any other deadlines under Insurance Code Chapter 2210, Subchapter L-1 that apply only to the association may not exceed 120 days in the aggregate for claims arising from the same occurrence. For purposes of Insurance Code §2210.581(b), all other deadlines related to mediation--including those for mediators--are considered applicable to both the claimant and the association and are not subject to an extension limit. [For claims filed during a particular catastrophe year, deadline extensions by the commissioner may not exceed an aggregate of 120 days. This limit does not apply to extensions of the deadline to file an objection because a mediator is insured by the association.]

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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James Person

General Counsel

Texas Department of Insurance

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



PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 129. INCOME BENEFITS--TEMPORARY INCOME BENEFITS

28 TAC §129.5

INTRODUCTION

The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes amending 28 Texas Administrative Code (TAC) §129.5, concerning Work Status Reports. These amendments will conform §129.5 to the changes to Texas Labor

Code §408.025(a-1) made by House Bill (HB) 387, 86th Legislature, Regular Session (2019). These changes authorize a treating doctor to delegate authority to complete, sign, and file a work status report to a licensed advanced practice registered nurse.

BACKGROUND AND PURPOSE

The amendments to §129.5 provide that a licensed advanced practice registered nurse may be delegated authority to complete, sign, and file DWC Form-073, *Work Status Report*, by a treating doctor. DWC has revised DWC Form-073 in conjunction with this rule amendment. In addition, the amendments include non-substantive editorial and formatting changes to conform the rule to the agency's current style and to improve the rule's clarity.

EXPLANATION OF THE PROPOSED AMENDMENTS

Subsection §129.5(b) is amended to provide that, as authorized under their licensing act, a treating doctor may delegate authority to complete, sign, and file a work status report to a licensed advanced practice registered nurse. Under Labor Code §408.025, the delegating treating doctor is responsible for the acts of the advanced practice registered nurse.

Subsection (c) is amended to add delegated advanced practice registered nurses to the list of persons who shall file a work status report in the form and manner prescribed by DWC.

Subsection (d) is amended to add delegated advanced practice registered nurses to the list of persons who shall be considered to have filed a complete work status report if the report contains the necessary information prescribed by DWC.

Subsection (e) is amended to add delegated advanced practice registered nurses to the list of persons who shall file a work status report and describes the situations when a work status report must be filed on an injured employee's claim.

Subsection (g) is amended to add delegated advanced practice registered nurses to the list of persons who shall file a work status report with the insurance carrier, employer, and injured employee within seven days of the day of receipt of certain information.

Subsection (i) is amended to add delegated advanced practice registered nurses to the list of persons who shall file a work status report with the insurance carrier, employer, and the injured employee.

Subsection (j) is amended to add delegated advanced practice registered nurses to the list of persons who may bill for the work status report.

Subsection (j)(1) is amended to add delegated advanced practice registered nurses to the list of persons who shall use CPT code "99080" with modifier "73" when billing for the work status report.

Subsection (j)(2) is amended to add delegated advanced practice registered nurses to the list of persons who shall use CPT code "99080" with modifiers "73" and "RR" when billing for a work status report requested by an insurance carrier.

Subsection (j)(3) is amended to add delegated advanced practice registered nurses to the list of persons who shall use CPT code "99080" with modifier "73" and "EC" when billing for an extra copy of a previously filed work status report requested by or through the insurance carrier.

FISCAL NOTE

Matthew Zurek, Deputy Commissioner for Health and Safety has determined that for each year of the first five years the proposed sections are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposed amendments.

Mr. Zurek has also determined that, for each of the first five years §129.5 is in effect, the public benefits anticipated as a result of the amendments include aligning §129.5 with the current statute.

PUBLIC BENEFITS AND COSTS

Mr. Zurek expects that the proposed amendments will not increase the cost of compliance with Labor Code §408.025(a-1) because it does not impose requirements beyond those in the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. Proposed amendments to §129.5 conform the rule addressing delegation of authority to complete, sign, and file work status reports with the statutory requirements set out in Labor Code §408.025. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS TO REGULATED PERSONS UNDER GOVERNMENT CODE §2001.0045.

DWC has determined that this proposal does not impose a cost on regulated persons because it aligns the language in §129.5 with the statutory requirements for work status reports set forth in Labor Code §408.025. Therefore, an examination of cost under Government Code §2001.0045(b) is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

The proposed amendments to §129.5 will not create or eliminate a government program and will not require the creation or elimination of existing employee positions. The proposed amendments will not require an increase or decrease in future legislative appropriations to DWC and will not result in an increase or decrease in fees paid to DWC. The proposal does not create a new regulation, expand an existing regulation, or limit an existing regulation. The number of individuals subject to the rule's applicability has increased by the proposal because advanced practice registered nurses are authorized to complete, sign, and file work status reports under Labor Code §408.025(a-1) and will now be included in the rule. The legislative amendment of HB 387 created the increase in applicability and the increase enlarges the number of people authorized to complete, sign, and file a work status report, improving regulatory flexibility. The proposal has no impact on the state's economy.

TAKINGS IMPACT ASSESSMENT

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

REQUEST FOR COMMENTS

Written comments or public hearing requests may be submitted by e-mail to RuleComments@tdi.texas.gov, or by mailing or delivering your comments to Cynthia Guillen, Office of the General Counsel, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. To be considered, comments must be received by 5 p.m., Central time, on November 11, 2019. A request for a public hearing must be sent separately from your written comments and must be received before the end of the comment period. If a public hearing is held, DWC will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY

DWC proposes amendments to §129.5 under Labor Code §§402.00111, 402.00116, 402.061, and 408.025.

Labor Code §402.00111 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of DWC under the Labor Code and other laws of this state.

Labor Code §402.00116 states that the commissioner is DWC's chief executive and has the powers and duties vested in DWC by the Labor Code and other workers' compensation laws of Texas.

Labor Code §402.061 states that the commissioner shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act.

Labor Code §408.025 provides that a treating doctor may delegate to a licensed advanced practice registered nurse authority to complete, sign, and file a work status report.

The proposed amendments support the implementation of the Workers' Compensation Act, Labor Code Title 5, Subtitle A.

§129.5. *Work Status Reports*

(a) (No change.)

(b) If authorized under their licensing act, a treating doctor may delegate authority to complete, sign, and file a work status report to a licensed physician assistant or a licensed advanced practice registered nurse as authorized under Texas Labor Code §408.025(a-1) [§408.025]. The delegating treating doctor is responsible for the acts of the physician assistant and the advanced practice registered nurse under this subsection.

(c) The doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse shall file a Work Status Report in the form and manner prescribed by the division.

(d) The doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse shall be considered to have filed a complete Work Status Report if the report is filed in the form and manner prescribed by the division, signed, and contains at minimum:

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

(e) The doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse shall file the Work Status Report:

(1) after the initial examination of the injured employee, regardless of the injured employee's work status;

(2) when the injured employee experiences a change in work status or a substantial change in activity restrictions; and

(3) on the schedule requested by the insurance carrier, its agent, or the employer requesting the report through its insurance carrier, which shall not exceed one report every two weeks and which shall be based upon the doctor's, [ØF] delegated physician assistant's, or

delegated advanced practice registered nurse's scheduled appointments with the injured employee.

(f) (No change.)

(g) In addition to the requirements under subsection (e) of this section, the treating doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse shall file the Work Status Report with the insurance carrier, employer, and injured employee within seven days of the day of receipt of:

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

(h) (No change.)

(i) The doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse shall file the Work Status Report as follows:

(1) A report filed with the insurance carrier or its agent shall be filed by electronic transmission;

(2) A report filed with the employer shall be filed by electronic transmission if the doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse has been provided the employer's facsimile number or email address; otherwise, the report shall be filed by personal delivery or mail; and

(3) A report filed with the injured employee shall be hand delivered to the injured employee or delivered by electronic transmission if the injured employee agrees to receive the report by electronic transmission, unless the report is being filed pursuant to subsection (g) of this section and the doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse is not scheduled to see the injured employee by the due date to send the report. In this case, the doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse shall file the report with the injured employee by electronic transmission if the doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse has been provided the injured employee's facsimile number or email address; otherwise, the report shall be filed by mail.

(j) Notwithstanding any other provision of this title, a doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse may bill for, and an insurance carrier shall reimburse, filing a complete Work Status Report required under this section or for providing a subsequent copy of a Work Status Report which was previously filed because the insurance carrier, its agent, or the employer through its insurance carrier asks for an extra copy. The amount of reimbursement shall be \$15. A doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse shall not bill in excess of \$15 and shall not bill or be entitled to reimbursement for a Work Status Report which is not reimbursable under this section. Doctors, [ØF] delegated physician assistants, or delegated advanced practice registered nurses are not required to submit a copy of the report being billed for with the bill if the report was previously provided. Doctors, [ØF] delegated physician assistants, or delegated advanced practice registered nurses billing for Work Status Reports as permitted by this section shall do so as follows:

(1) CPT code "99080" with modifier "73" shall be used when the doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse is billing for a report required under subsections (e)(1), (e)(2), and (g) of this section;

(2) CPT code "99080" with modifiers "73" and "RR" (for "requested report") shall be used when the doctor, [ØF] delegated physician assistant, or delegated advanced practice registered nurse is billing for an additional report requested by or through the insurance carrier under subsection (e)(3) of this section; and

(3) CPT code "99080" with modifiers "73" and "EC" (for "extra copy") shall be used when the doctor, [or] delegated physician assistant, or delegated advanced practice registered nurse is billing for an extra copy of a previously filed report requested by or through the insurance carrier.

(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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Nicholas Canaday III

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

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For further information, please call: (512) 804-4721



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.74

The Comptroller of Public Accounts proposes amendments to §3.74, concerning seller responsibility. The amendments add definitions and implement the changes made to Tax Code, Chapter 152 (Taxes on Sale, Rental, and Use of Motor Vehicles) by House Bill 2067, 85th Legislature, 2017.

The comptroller amends subsection (a) to define two new terms. New paragraph (14) defines the term "related finance company" based on the definition provided by Tax Code, §152.0475 (Registration of Related Finance Company). New paragraph (20) defines "Texas Registration for Motor Vehicle Related Finance Company" as Form AP-222, which is promulgated by the comptroller. The comptroller renumbers all subsequent paragraphs accordingly.

The comptroller amends subsection (c)(4) to correctly use the term "subsection."

The comptroller amends subsection (e)(7) to use the defined term "related finance company" in lieu of the phrase "related finance company, as provided by Tax Code, §152.0475 (Registration of Related Financed Company)."

The comptroller proposes new subsection (f) to implement House Bill 2067, which amended Tax Code, §152.0475(c) to allow a related finance company registration to remain in effect indefinitely until the registration holder or the comptroller cancels the registration. The comptroller reletters subsequent subsections accordingly.

Tom Currah, Chief Revenue Estimator, has determined that during the first five years that the proposed amendment is in effect,

the amendment: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy. This proposal amends a current rule.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, proposed amendment would benefit the public by implementing current statutes into a published rule. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

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

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

The amendments implement Tax Code, §§152.001 (Definitions), 152.002 (Total Consideration)152.0411 (Collection by Sellers), 152.047 (Collection of Tax on Seller-Financed Sale), and152.0472 (Determination of Whether Loan is Factor, Assigned, or Transferred).

§3.74. *Seller Responsibility.*

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

(1) Application for Texas Title and/or Registration--Form 130-U, its electronic equivalent, or a successor form, promulgated jointly by the comptroller and the Texas Department of Motor Vehicles, used to apply for a motor vehicle title and registration and to pay any motor vehicle sales or use tax due. The Application for Texas Title and/or Registration is available at comptroller.texas.gov.

(2) Cash discount--An actual reduction of the price required to be paid by the purchaser to the dealer. The term includes, but is not limited to, separately stated manufacturers' rebates, dealers' rebates, and cash rebates passed directly to the purchaser at the time of sale, and discounts allowed for payment within a specified time.

(3) Date of sale--The day the purchaser takes possession of a motor vehicle unless otherwise specified by written agreement.

(4) Dealer--A person who holds a general distinguishing number or operates under similar regulatory requirements of another state or jurisdiction. The term includes a franchised motor vehicle dealer and an independent motor vehicle dealer. The term does not include a salvage vehicle dealer licensed under Occupations Code, Chapter 2302 (Salvage Vehicle Dealers).

(5) Distributor--A person, other than a manufacturer, who:

(A) distributes or sells new motor vehicles to a franchised motor vehicle dealer; or

(B) enters into franchise agreements with franchised motor vehicle dealers, on behalf of the manufacturer.

(6) Extended warranty or service contract--A policy sold to the purchaser of a motor vehicle for an additional amount, the provisions of which become effective after the manufacturer's warranty expires.

(7) Franchised motor vehicle dealer--A dealer who:

(A) holds a franchised motor vehicle license issued under Occupations Code, Chapter 2301 (Sale or Lease of Motor Vehicles); and

(B) is engaged in the business of buying, selling, or exchanging new motor vehicles at an established and permanent place of business under a franchise agreement with a manufacturer or distributor; or

(C) is licensed under similar regulatory requirements of another state or jurisdiction.

(8) General distinguishing number--A dealer license issued by the Texas Department of Motor Vehicles under Transportation Code, Chapter 503 (Dealer's and Manufacturer's Vehicle License Plates).

(9) Independent motor vehicle dealer--A dealer who is not a franchised motor vehicle dealer, an independent mobility motor vehicle dealer, or a wholesale motor vehicle dealer.

(10) Lease--An agreement other than a rental, by an owner of a motor vehicle to give for longer than 180 days exclusive use of a motor vehicle to another for consideration. For more information on motor vehicle leases, see §3.70 of this title (relating to Motor Vehicle Leases and Sales).

(11) Manufacturer--A person who manufactures or assembles new motor vehicles and holds a manufacturer's license issued under Occupations Code, §2301.259 (Application for Manufacturer's License). The term does not include a person operating only as an ambulance manufacturer, chassis manufacturer, fire-fighting vehicle manufacturer, motor home manufacturer, or a converter as those terms are defined in Occupations Code, §2301.002 (Definitions).

(12) Motor vehicle--A vehicle described by Tax Code, §152.001(3) (Definitions). In general, a motor vehicle includes a self-propelled vehicle designed to transport persons or property upon the public highway and a vehicle designed to be towed by a self-propelled vehicle while carrying property. The term includes, but is not limited to: automobiles; buses; vans; motor homes; motorcycles; trucks and truck tractors; truck cab and chassis; semitrailers; trailers and travel trailers, as defined by §3.72 of this title (relating to Trailers, Farm Machines, and Timber Machines); trailers sold unassembled in a kit; dollies; jeeps; stingers; auxiliary axles; converter gears; and park models, as defined by §3.481 of this title (relating to Imposition and Collection of Manufactured Housing Tax). The term does not include a vehicle to which the certificate of title has been surrendered in exchange for a salvage vehicle title or a nonrepairable vehicle title issued under Transportation Code, Chapter 501 (Certificate of Title Act).

(13) New motor vehicle--A motor vehicle that, without regard to mileage, has not been the subject of a retail tax.

(14) Related finance company--A person in which at least 80% of the ownership is identical to the ownership of a dealer, as defined by Transportation Code, §503.001 (Definitions).

(15) [(14)] Rental--An agreement:

(A) by the owner of a motor vehicle to give exclusive use of that motor vehicle to another for consideration, for a period of time not to exceed 180 days under any one agreement;

(B) by an original manufacturer of a motor vehicle to give exclusive use of the motor vehicle to another for consideration; or

(C) by the owner of a motor vehicle to give exclusive use of the motor vehicle to another for re-rental purposes, regardless of the period of time covered by the agreement.

(16) [(15)] Retail sale--A sale of a motor vehicle other than:

(A) a sale for resale; or

(B) a sale for lease, meaning a sale to a franchised motor vehicle dealer of a new motor vehicle removed from the franchised motor vehicle dealer's inventory for the purpose of entering into a contract to lease the motor vehicle to another person if, within seven days of executing the lease contract, the franchised motor vehicle dealer transfers title of the motor vehicle and assigns the lease contract to the lessor of the motor vehicle. If the title is not transferred and the lease assigned within seven calendar days, the dealer's purchase and use will be presumed to be a retail purchase and taxable. The presumption may be overcome by showing evidence of intent.

(17) [(16)] Sale for resale--The sale of a motor vehicle to a purchaser who acquires the motor vehicle either for the exclusive purpose of sale in a manner provided by law, or for purposes allowed by the Texas Department of Motor Vehicles under Transportation Code, Chapter 503, when the purchaser is:

(A) a distributor;

(B) a manufacturer;

(C) a franchised motor vehicle dealer who is authorized by law and by a franchise agreement to offer a motor vehicle for sale as a new motor vehicle; or

(D) an independent motor vehicle dealer who is authorized by law to offer a motor vehicle for sale as a used motor vehicle.

(E) The following are examples of uses allowed under Transportation Code, Chapter 503, that do not disqualify a purchase as a sale for resale:

(i) when a dealer uses the motor vehicle on public highways with a metal dealer's plate issued under Transportation Code, §503.061 (Dealer's License Plates);

(ii) when a manufacturer or distributor removes a motor vehicle from its inventory and tests the motor vehicle on public highways with a manufacturer's plate issued under Transportation Code, §503.064 (Manufacturer's License Plates); and

(iii) when a manufacturer or distributor loans the motor vehicle to a consumer for a purpose described by Occupations Code, §2301.605 (Rebuttable Presumption--Reasonable Number of Attempts).

(18) [(17)] Seller-financed sale--A retail sale of a motor vehicle by a dealer in which the selling dealer collects all or part of the total consideration in periodic payments and retains a lien on the motor vehicle until all payments have been received. The term does not include a:

(A) retail sale of a motor vehicle in which a person other than the seller provides the total consideration for the sale and retains a lien on the motor vehicle as collateral;

(B) lease; or

(C) rental.

(19) ~~[(18)]~~ Seller-financed sales tax report--The Texas Motor Vehicle Seller-Financed Sales Tax Report, Form 14-117, its electronic equivalent, or a successor form, promulgated by the comptroller. The seller-financed sales tax report is available at comptroller.texas.gov.

(20) Texas Registration for Motor Vehicle Related Finance Company--Form AP-222, its electronic equivalent, or a successor form, promulgated by the comptroller, used to apply for a related finance company registration. Texas Registration for Motor Vehicle Related Finance Company is available at comptroller.texas.gov.

(21) ~~[(19)]~~ Total consideration--

(A) The amount paid or to be paid for a motor vehicle and its accessories attached on or before the sale, without deducting:

- (i) the cost of the motor vehicle;
- (ii) the cost of material, labor or service, interest paid, loss, or any other expense;
- (iii) the cost of transportation of the motor vehicle before its sale; or
- (iv) the amount of manufacturers' or importers' excise tax imposed on the motor vehicle by the United States.

(B) The amount paid or to be paid includes anything of monetary value, such as cash or the equivalent; a book entry reflecting cash received or paid; the forgiveness or assumption of debt; book entries reflecting accounts receivable or accounts payable for an item; the performance of a service; or real or tangible personal property.

(C) The term does not include:

- (i) separately stated cash discounts;
- (ii) a full cash or credit refund to a customer of the sales price of, meaning the amount paid for, a motor vehicle that the customer returns to the seller;
- (iii) the amount charged for labor or service rendered in installing, applying, remodeling, or repairing the motor vehicle sold;
- (iv) separately stated finance or interest charges on credit extended under a conditional sale or other deferred payment contract;
- (v) the value of a motor vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle;
- (vi) the fair market value of a motor vehicle titled in Texas in the name of a dealer or a person who is in the business of renting or leasing motor vehicles, as provided by §3.73 of this title (relating to Qualifying for Fair Market Value Deduction and Determination of Fair Market Value for Replaced Vehicles);
- (vii) a charge for transportation of the motor vehicle after the sale of the motor vehicle;
- (viii) motor vehicle inventory tax; or
- (ix) separately stated charges for the sale of an extended warranty or service contract.

(b) Motor vehicle seller-financed sales tax permit. Every dealer making seller-financed sales must apply to the comptroller and obtain a Motor Vehicle Seller-Financed Sales Tax Permit.

(1) To obtain a permit, the dealer must complete a Texas Application for Motor Vehicle Seller-Financed Sales Tax Permit, Form

AP-169, its electronic equivalent, or its successor, promulgated by the comptroller. The application is available at comptroller.texas.gov.

(2) A separate permit is not required for each location. The comptroller issues one Motor Vehicle Seller-Financed Sales Tax Permit to each dealer making seller-financed sales, regardless of the number of locations or dealerships the dealer operates.

(3) Each dealer (corporation, partnership, sole proprietor, etc.) must apply for its own permit. The permit cannot be transferred from one dealer to another.

(c) Collection and remittance of motor vehicle tax.

(1) Seller-financed sales.

(A) A dealer who makes a seller-financed sale must apply to the appropriate county tax assessor-collector to title and register the motor vehicle by filing an Application for Texas Title and/or Registration no later than the 45th day after the date the motor vehicle is delivered to the purchaser.

(B) A dealer making a seller-financed sale must also:

(i) collect and remit motor vehicle tax on the total consideration for the motor vehicle at the time the Application for Texas Title and/or Registration is presented to the county tax assessor-collector; or

(ii) collect and remit the motor vehicle tax to the comptroller as the payments are received, as explained in subsection (d) of this section. A dealer making a seller-financed sale must include its 11-digit Seller-Financed Sales Tax Permit Number on the Application for Texas Title and/or Registration if the dealer intends to remit the motor vehicle tax on a report to the comptroller instead of remitting the motor vehicle tax at the time the Application for Texas Title and/or Registration is presented to the county tax assessor-collector.

(2) Retail sales other than seller-financed sales.

(A) A dealer must collect motor vehicle tax on each retail sale, unless an exemption applies. The tax is imposed on the total consideration for the motor vehicle.

(B) The dealer must remit the motor vehicle tax due to the appropriate county tax assessor-collector at the time the dealer submits the Application for Texas Title and/or Registration. Motor vehicle tax is due within 30 calendar days after the date of the sale.

(C) A dealer is not required to collect motor vehicle tax on the sale of a motor vehicle with a gross weight in excess of 11,000 pounds. If the dealer does not collect the motor vehicle tax, the dealer must provide the purchaser with an Application for Texas Title and/or Registration, signed by both the dealer and purchaser, and all other documents required by the Texas Department of Motor Vehicles to apply for title or register the motor vehicle. The purchaser must remit motor vehicle tax to the county tax assessor-collector within 30 calendar days after the date of sale.

(D) If a dealer sells a commercial motor vehicle that is required to be equipped with a body or other necessary equipment before the motor vehicle can be registered under the Transportation Code, then the dealer must remit the motor vehicle tax within 30 calendar days after the date on which the motor vehicle becomes eligible for registration.

(3) The dealer must retain copies of the documentation provided to the purchaser and all other records pertaining to the sale. The specific records each dealer is required to keep are listed in Tax Code, §152.063 (Records) and §152.0635 (Records of Certain Sellers). The dealer must keep the records for a minimum of four years from the date

on which the record is made, and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller or in which an administrative hearing or judicial proceeding is pending, unless the comptroller authorizes in writing a shorter retention period.

(4) The motor vehicle tax due is 6.25% of the total consideration. Except as provided in paragraph (2)(C) of this subsection [section], the motor vehicle tax is a debt of the purchaser to the dealer until paid. Unpaid motor vehicle tax is recoverable by the dealer in the same manner as the total consideration for the motor vehicle, if unpaid, would be recoverable. The comptroller may proceed against either the dealer or purchaser, or both, until all applicable motor vehicle tax, penalty, and interest due has been paid.

(d) Remittance of motor vehicle tax on seller-financed sales as payments are received.

(1) Each dealer making seller-financed sales who collects motor vehicle tax as the payments are received from the purchaser must remit the motor vehicle tax collected to the comptroller on or before the 20th day of the month following each reporting period. The dealer must file a consolidated report with the comptroller, together with the motor vehicle tax collected for seller-financed sales made at all locations owned by the dealer.

(2) The dealer must file a consolidated seller-financed sales tax report for seller-financed sales made at all locations owned by the dealer, together with the motor vehicle tax collected. The report must be signed by the dealer or the dealer's authorized agent. The fact that the dealer does not receive the form or does not receive the correct form from the comptroller for the filing of the report does not relieve the dealer of the responsibility of filing a report and remitting motor vehicle tax. The report is available at comptroller.texas.gov.

(3) A dealer making seller-financed sales may file reports and remit motor vehicle tax electronically, such as through Webfile at comptroller.texas.gov. Dealers who paid \$100,000 or more in motor vehicle tax to the comptroller during the preceding fiscal year must remit motor vehicle tax electronically, as provided by Tax Code, §111.0625 (Electronic Transfer of Certain Payments). Dealers who paid \$50,000 or more to the comptroller during the preceding fiscal year must file report data electronically, as provided by Tax Code, §111.0626 (Electronic Filing of Certain Reports). For more information on electronic filing and payments, see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(4) A dealer completing a seller-financed sales tax report must allocate the motor vehicle tax paid on a motor vehicle to the county in which the dealer submitted the Application for Texas Title and/or Registration for the vehicle.

(5) A dealer who remits less than \$1,500 in motor vehicle tax per quarter may file reports quarterly. The quarterly reporting periods end on March 31st, June 30th, September 30th, and December 31st.

(6) A dealer who remits \$1,500 or more in motor vehicle tax per quarter must file monthly reports, except a dealer making seller-financed sales who chooses to prepay the motor vehicle tax, as provided in paragraph (7) of this subsection.

(7) Discounts and prepayments of the motor vehicle tax.

(A) Each dealer making seller-financed sales may claim a discount for timely filing a seller-financed sales tax report and remitting motor vehicle tax due as reimbursement for the expense of collecting and remitting the motor vehicle tax. The discount is equal to

0.5% of the amount of the motor vehicle tax due and may be claimed on the report for each reporting period. The discount is computed on the amount of motor vehicle tax timely reported and remitted for each reporting period.

(B) A dealer making seller-financed sales who makes a timely prepayment of at least 90% of the total amount of motor vehicle tax currently due, or an amount equal to the actual motor vehicle tax liability due and paid for the same reporting period of the immediately preceding year, may retain an additional 1.25% of the amount of motor vehicle tax due.

(i) The monthly prepayment must be made on or before the 15th day of the month for which the tax is due.

(ii) The quarterly prepayment must be made on or before the 15th day of the second month of the quarter for which the tax is due.

(iii) The dealer must file a seller-financed sales tax report showing the actual liability and remit any amount due in excess of the prepayment on or before the 20th day of the month following the quarter or month for which a prepayment was made.

(iv) If there is an additional amount due when the seller-financed sales tax report is filed, the dealer may claim the 0.5% discount for timely filing, including on the additional amount of motor vehicle tax due, provided that both the seller-financed sales tax report and the additional amount of motor vehicle tax due are filed timely. If the prepayment exceeded the actual liability, the dealer will be mailed a notice of overpayment or a refund warrant.

(v) A remittance that is less than 90% of the total amount of motor vehicle tax currently due, or less than the amount of actual motor vehicle tax due and paid for the same reporting period of the immediately preceding year, is not a valid prepayment and the 1.25% discount will not be allowed.

(8) Penalties and interest.

(A) If a dealer does not file a seller-financed sales tax report together with payment on or before the due date, the dealer forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the dealer. After the first 60 days delinquency, interest begins to accrue at the prime rate, as published in the *Wall Street Journal* on the first business day of each calendar year, plus 1.0%.

(B) A dealer who fails to timely file a seller-financed sales tax report when due must pay an additional penalty of \$50. The penalty is due regardless of whether motor vehicle taxes are due for the reporting period.

(e) General principles of seller-financed sales.

(1) The total downpayment is subject to motor vehicle tax unless the payment is itemized to indicate nontaxable charges.

(2) If the finance agreement bears interest, it is presumed that interest accrues and is paid by the purchaser on a straight line basis.

(3) A transaction is considered paid in full when the purchaser of a seller-financed motor vehicle trades-in that motor vehicle to the dealer as consideration for the purchase of another motor vehicle from the same dealer. The remainder of motor vehicle tax owed on the initial sale must be reported on the first seller-financed sales tax report due no later than the 20th day of the month following the end of the reporting period in which the trade-in occurred.

(4) Motor vehicle tax remitted to the county tax assessor-collector at the time the Application for Texas Title and/or Registration

is submitted is considered to satisfy the tax liability for that transaction and no refund is available if the purchaser fails to satisfy their total liability to the dealer making the seller-financed sale.

(5) If a dealer making a seller-financed sale fails to submit the Application for Texas Title and/or Registration to apply for title and registration within 60 days from the date of sale, the dealer becomes liable for all unremitted motor vehicle tax based on the total consideration for the motor vehicle. The dealer must remit all unremitted motor vehicle tax on the first seller-financed sales tax report due no later than the 20th day of the month following the end of the reporting period in which the expiration of the 60 days occurred.

(6) Unless excluded from acceleration of motor vehicle tax by paragraph (7) of this subsection, if the dealer sells, factors, assigns, or otherwise transfers the right to receive payments on a seller-financed sale, the dealer is liable for all unremitted motor vehicle tax due on the total consideration for the motor vehicle. The dealer must report and remit any motor vehicle tax due on the seller-financed sales tax report due no later than then 20th day of the month following the end of the reporting period in which the transfer of the right to receive payments occurred. The dealer may not take a deduction in the amount of motor vehicle tax due, even if the dealer sells the right to receive payments at a discount or grants the purchaser of the notes a right of recourse.

(7) Motor vehicle tax remittance does not accelerate if a dealer sells, factors, assigns, or otherwise transfers the right to receive payments on a seller-financed sale to a person registered with the comptroller's office as a related finance company~~;~~ as provided by Tax Code, §152.0475 (Registration of Related Financed Company); or when the dealer grants a security interest in a purchaser's account, but retains custody and control of the account and the right to receive payments in the absence of a default under the security agreement.

(8) If the dealer remits the motor vehicle tax due in accordance with paragraph (6) of this subsection, and the motor vehicle purchaser fails to make payments to the dealer's transferee or assignee, then no bad debt deduction for any amount that the transferee or assignee determines to be uncollectible on the purchaser's account may be taken against any motor vehicle tax that the transferee or assignee may owe.

(f) Registration of related finance companies.

(1) To register with the comptroller's office as a related finance company, a person must complete a Texas Registration for Motor Vehicle Related Finance Company.

(2) The registration remains in effect until canceled by the registration holder or the comptroller.

(g) ~~(h)~~ Resale certificates and exemption documentation.

(1) A seller may accept a Texas Motor Vehicle Resale Certificate, Form 14-313, its electronic equivalent, or its successor, promulgated by the comptroller only from a dealer as defined in this section. A motor vehicle resale certificate for the sale of a new motor vehicle purchased for resale may only be accepted from a franchised motor vehicle dealer. To be valid, the motor vehicle resale certificate must show the dealer license issued under Transportation Code, Chapter 503. The resale certificate is available at comptroller.texas.gov. See §3.95 of this title (relating to Motor Vehicle Sales Tax Resale Certificate; Sales for Resale).

(2) A seller may accept a properly completed Texas Motor Vehicle Sales Tax Exemption Certificate--For Vehicles Taken Out of State, Form 14-312, its electronic equivalent, or its successor, promulgated by the comptroller, in lieu of collecting tax on motor vehicles that will be removed from this state without being operated other than

to remove the motor vehicle from this state. The exemption certificate is available at comptroller.texas.gov. See §3.90 of this title (relating to Motor Vehicles Purchased for Use Outside of Texas).

(3) A purchaser claiming an exemption on the purchase of a motor vehicle that qualifies for an exemption under Tax Code, Chapter 152, Subchapter E, must indicate the exemption claimed on the Application for Texas Title and/or Registration at the time of purchase. The Application for Texas Title and/or Registration noting the exemption claimed is submitted to the county tax assessor-collector in lieu of tax.

(h) ~~(g)~~ Unremitted tax paid to seller, transfer of certificate of title.

(1) A county tax assessor-collector may accept an Application for Texas Title and/or Registration without the payment of motor vehicle tax from a purchaser who paid the motor vehicle tax to a dealer who failed to remit the motor vehicle tax as described in subsection (c) of this section.

(2) The purchaser must present acceptable evidence of motor vehicle tax payment at the time an Application for Texas Title and/or Registration is submitted to the county tax assessor-collector. Acceptable evidence includes, but is not limited to, a sales contract or bill of sale that identifies the dealer and the amount of motor vehicle tax paid.

(3) The Application for Texas Title and/or Registration must contain the dealer's Motor Vehicle Seller-Financed Sales Tax Permit number (if applicable and available) and must indicate that motor vehicle tax has been paid to the dealer and no additional motor vehicle tax is due from the purchaser.

(4) The county tax assessor-collector shall notify the comptroller of the dealer's failure to remit the motor vehicle tax through the automated Registration-Title System (RTS) and include the document indicating motor vehicle tax paid to the dealer in the title application material.

(i) ~~(h)~~ Prohibited advertising. A dealer may not directly or indirectly advertise, hold out or state to a customer or the public that he will assume, absorb or refund a part of the motor vehicle tax imposed on the sale of a motor vehicle, or will not add tax to the sales price.

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 September 25, 2019.

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William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.360

The Comptroller of Public Accounts proposes amendments to §3.360, concerning customs brokers.

The comptroller amends subsection (a), relating to definitions. New paragraph (4) defines the term "original receipt." The defini-

tion recognizes that due to changes in technology an electronic receipt may be the only receipt provided to a purchaser by a retailer. The comptroller renumbers existing paragraphs in the subsection accordingly. The comptroller amends renumbered paragraph (5) to add missing punctuation.

The comptroller amends subsection (b)(3)(F)(i) to update a reference to the Bureau of Citizenship and Immigration Security with a reference to the United States Customs and Border Protection, the successor agency issuing Form I-94, Arrival/Departure record.

The comptroller amends subsection (e) to correct punctuation errors.

Throughout the section, the comptroller replaces references to the term "receipt" or "sales receipt" with the newly defined term "original receipt." The comptroller also replaces all references to the United States Customs Service with references to the United States Customs and Border Protection, the successor to this agency.

The comptroller makes non-substantive changes to make the section gender neutral.

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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by clearly defining policy, definitions, and citations. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

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

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §§151.157, (Customs Brokers), 151.1575 (Requirements Relating to Issuing Documentation Showing Exportation of Property), 151.158 (Export Stamps), 151.307 (Exemptions Required by Prevailing Law), 151.712 (Civil Penalty for Persons Certifying Exports), 151.713 (Furnishing False Information to Customs Broker; Civil Penalty).

§3.360. *Customs Brokers.*

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

(1) Authorized employee--A person who is authorized by their [his] employer to perform customs transactions or related services on behalf of the employer, is compensated by the employer with a regular salary or wages, is under the direct control and supervision of the employer, and from whose salary or wages the employer is required to and actually does deduct and withhold a tax under federal law. This definition applies to employees of customs brokers and employees of verification contractors.

(2) Certification identification number--The number generated by the comptroller's website used to prepare export certification forms as described in subsection (k) of this section.

(3) Licensed customs broker--A person who is licensed by the United States Customs and Border Protection [Service] to act as a customs broker and who holds a Texas Customs Broker License issued by the comptroller as provided for in this section.

(4) Original receipt--The final documentation of a sale provided by the retailer at the time of purchase or when purchased items are received. An original receipt may be in either physical or electronic format, but may not be a record such as a duplicate, reprint, or copy used by the retailer for internal purposes.

(5) [(4)] Purchaser Identification Number--A number issued by a purchaser's country of residence for purposes of identification. For example, a purchaser from the United Mexican States may have as a purchaser identification number either a "Registro Federal de Contribuyente" or "Registro Federal de Causante" (collectively "RFC"), or a "Clave Unica de Registro de la Población" (Unique Code to Register the Population or "CURP").

(6) [(5)] Total value of property--The sales price, as shown on original receipts and invoices, of all property for which a licensed customs broker issued export certification forms during a calendar quarter.

(7) [(6)] Total amount of tax on property--The total amount of all Texas state and local sales and use taxes paid on property for which a licensed customs broker issued export certification forms during a calendar quarter.

(8) [(7)] Total amount of tax refunded--The total amount of all Texas state and local sales and use taxes that retailers refunded to a customs broker during a calendar quarter.

(9) [(8)] Verification contractor--An independent contractor who, for consideration and under a written contract with a licensed customs broker, monitors the export of property on behalf of a licensed customs broker as provided in subsection (b)(1) of this section. Unless the context clearly indicates otherwise, all references in this section to a verification contractor include an authorized employee of a verification contractor.

(b) Certification of exports. Only a licensed customs broker or an authorized employee of a licensed customs broker may fully or partially prepare, issue, and/or sign a valid export certification form as provided for in this section and in §3.323 of this title (relating to Imports and Exports). A retailer who receives documentation that is valid under this section certifying that delivery was made to a point outside of the territorial limits of the United States should refer to §3.323(e) of this title for information regarding refunds. A licensed customs broker, or an authorized employee of the customs broker, may issue an export certification form only if the customs broker or authorized employee:

(1) personally witnesses, or a verification contractor personally witnesses, the transportation of property across the border of the United States;

(2) personally witnesses the property being placed on a common carrier for delivery outside the territorial limits of the United States; or

(3) verifies by performing all of the following actions that the purchaser is transporting the property to a destination outside of the territorial limits of the United States:

(A) examines a passport, laser visa identification card, or picture foreign voter registration identification that proves that the purchaser of the property resides in a foreign country;

(B) requires that the documentation examined under subparagraph (A) of this paragraph have a unique purchaser identification number for that purchaser;

(C) requires that the purchaser produce the property and the original [sales] receipt for the property so the customs broker or authorized employee can verify that the property is the same property as described in the purchaser's original [sales] receipt. The comptroller shall limit to six the number of original receipts for which a single proof of export documentation may be issued under this section;

(D) requires that the purchaser state the foreign country of destination, which must be the foreign country in which the purchaser resides, the date and time the property is expected to arrive in the foreign country destination, the date and time the property was purchased, the name and address of the retailer from whom the purchaser bought the property, the sales price and quantity of the property, and a description of the property;

(E) requires that the purchaser and the customs broker or an authorized employee sign in the presence of each other a form prepared or approved by the comptroller:

(i) that states the purchaser has provided the information and documentation required in this paragraph;

(ii) that states "Providing false information to a customs broker is a Class B misdemeanor" clearly on the form; and

(iii) that contains a notice to the purchaser that property not exported to a foreign country is subject to Texas sales and use tax and the purchaser is liable for payment of an amount equal to the value of the property, as well as other possible civil liabilities and criminal penalties, if the purchaser improperly obtains a refund of taxes relating to the property;

(F) requires that the purchaser produce the following travel documentation for inspection by the customs broker or authorized employee:

(i) if the purchase was made in a county that does not border the United Mexican States, the purchaser's Form I-94, Arrival/Departure record, or its successor, as issued by the United States Customs and Border Protection [Bureau of Citizenship and Immigration Security of the United States Department of Homeland Security]; or

(ii) if the customs broker is located in a county that does not border the United Mexican States, the purchaser's travel documentation, e.g., airline or bus ticket; and

(G) requires the purchaser and the customs broker or an authorized employee, when using a power of attorney form to attest, as a part of the form and in the presence of each other:

(i) that the purchaser has provided the information and documentation required by this paragraph; and

(ii) that the purchaser is on notice that tangible personal property not exported is subject to taxation under this chapter and

the purchaser is liable, in addition to other possible civil liabilities and criminal penalties, for payment of an amount equal to the value of the merchandise if the purchaser improperly obtained a refund of taxes relating to the property;

(4) circles, and writes or states "exported" next to, each item to be exported on purchaser's original receipt; and

(5) if the property is verified in accordance with paragraph (3)(C) of this subsection at a time not contemporaneous with the issuance of the certification of export, the customs broker or an authorized employee, in addition to writing or stating "exported" next to each item to be exported on purchaser's original receipt, must write or state on each original receipt the date and time the property was verified for export, as well as the full printed name of the person making the verification.

(c) Texas Customs Broker License; prerequisites. A person may apply to the comptroller for a Texas Customs Broker License, which is a license to issue export certification forms for the purpose of claiming exemption from Texas sales and use taxes. To obtain a license, a person must:

(1) be currently licensed by the United States Customs and Border Protection [Service] to act as a customs broker;

(2) submit an application in the form prescribed by the comptroller;

(3) pay an annual license fee of \$300 for each place of business from which the customs broker intends to issue export certification forms;

(4) post a bond or security as required in subsection (h) of this section; and

(5) be current in payment of all taxes and fees administered by the comptroller.

(d) Form of application. The comptroller will prescribe an application form for a Texas Customs Broker License, which must include or be accompanied by the following:

(1) a copy of the applicant's license to act as a customs broker issued by the United States Customs and Border Protection [Service];

(2) the applicant's name, mailing address, primary business address, business telephone number, home address, and home telephone number, and the names, home addresses, and home telephone numbers of all the general partners (if the applicant is a partnership), the formation/registration number, formation/registration date, federal Employer Identification Number, and the names, home addresses, and home telephone numbers of the officers and directors (if the applicant is a corporation), or the names, home addresses, and home telephone numbers of the members (if the applicant is an entity other than a partnership or corporation);

(3) the names, mailing addresses, primary business addresses, business telephone numbers, home addresses, and home telephone numbers of all verification contractors and all authorized employees of verification contractors, and the names, home addresses, and home telephone numbers of all the general partners (if the verification contractor is a partnership), the formation/registration number, formation/registration date, federal Employer Identification Number, and the names, home addresses, and home telephone numbers of the officers and directors (if the verification contractor is a corporation), or the names, home addresses, and home telephone numbers of the members (if the verification contractor is an entity other than a partnership or corporation), and the date of contract of all verification contractors;

(4) the names, home addresses, and home telephone numbers of all employees who are authorized to certify exports in the name of the applicant and the date of hire of all such employees;

(5) a copy of each authorized employee's power of attorney to certify exports in the name of the applicant;

(6) the trade name of the applicant's business and the address of each location where export certifications are to be fully or partially prepared;

(7) the original signature or signatures of the applicant (if the applicant is a sole proprietor), an officer or director (if the applicant is a corporation), all general partners (if the applicant is a partnership), or an authorized member (if the applicant is an entity other than a corporation or partnership), and the original signatures of all authorized employees of the customs broker;

(8) the social security number of each authorized employee, verification contractor, and authorized employee of a verification contractor, and the social security number of the applicant (if the applicant is a sole proprietor), each general partner (if the applicant is a partnership), each officer and director (if the applicant is a corporation), or each member (if the applicant is an entity other than a partnership or corporation); and

(9) any other information the comptroller requires.

(e) Annual customs broker license and fee. An annual customs broker's [brokers] license issued under this section continues in effect through December 31st each year unless canceled by the customs broker or suspended or revoked by the comptroller before the expiration date. All expired, canceled, suspended, or revoked licenses must be immediately returned to the comptroller or they will be subject to confiscation. The annual license fee is non-refundable but the fee may be prorated on a calendar year \$75 per-quarter basis as follows:

(1) \$300 fee for a license with an effective date beginning January 1st through March 31st;[-]

(2) \$225 fee for a license with an effective date beginning April 1st through June 30th;[-]

(3) \$150 fee for a license with an effective date beginning July 1st through September 30th; or[-]

(4) \$75 fee for a license with an effective date beginning October 1st through December 31st [of a calendar year].

(f) Display of license. An original Texas Customs Broker License must be prominently displayed at each place of business of the customs broker where export certification forms are fully or partially prepared.

(g) Locations outside the United States. No Texas Customs Broker Licenses will be issued for locations beyond the territorial limits of the State of Texas.

(h) Bond or security. A licensed customs broker is required to post a bond or security in the amount of \$5,000, plus an additional \$1,000 for each place of business from which the customs broker intends to issue export certification forms.

(1) The security may be in the form of cash, a certificate of deposit, a letter of credit, or another instrument of value acceptable as security to the comptroller.

(2) The comptroller may forfeit a customs broker's bond or security and apply the amount to any liabilities due for unpaid taxes, penalties, interest, license fees, stamp fees, and other penalties imposed for any violations of the Tax Code or this section.

(3) A licensed customs broker, who has a bond or security forfeited by the comptroller, must immediately post another bond or security as required by the comptroller.

(4) A customs broker must send the comptroller a written request to obtain release of the bond or security once the broker has ceased to do business in Texas. The comptroller may release a bond or security once a customs broker has ceased doing business in Texas and the comptroller verifies that the customs broker has no outstanding liabilities or penalties due.

(i) Verification contractors. A licensed customs broker may enter into a written contract with a verification contractor to facilitate the monitoring of exports certified by the customs broker. A verification contractor may authorize by power of attorney their [his] full-time or part-time employee to perform verification services on their [his] behalf. A verification contractor may not fully or partially prepare, issue, and/or sign export certification forms and may not affix export certification stamps to export certification forms. A verification contractor's contract must be submitted to and approved by the comptroller before the verification contractor may perform export verification services.

(j) Export certification stamps. The comptroller will produce or have produced export certification stamps to be affixed to export certification forms.

(1) The comptroller may change the design as often as necessary for the enforcement of this section. The design will be changed at least once each calendar quarter.

(2) Only a licensed customs broker or authorized employee may receive stamps. A person obtaining stamps in person must present photo identification.

(3) There is a \$2.10 fee for each stamp.

(4) The stamps are non-transferable. A stamp is void if transferred to a person other than the customs broker to whom the comptroller originally issued the stamp or to that customs broker's authorized employee. This paragraph does not apply to a stamp that is actually affixed to an export certification form that is transferred in compliance with this section.

(5) All unused, expired stamps must be returned to the comptroller within 15 working days of the end of each calendar quarter. All such stamps must be delivered to the comptroller on the same date, at the same time, and to the same location. Unused stamps must be immediately returned to the comptroller upon cancellation, suspension, or revocation of the customs broker's license or upon notification that the customs broker is out of business and may be confiscated if not returned. Unused, expired stamps may not be retained, destroyed, or disposed of except by the comptroller. The comptroller will allow a licensed customs broker credit for returned unused stamps. Such credit must be used to purchase new stamps. A licensed customs broker who ceases to do business in Texas must return all unused stamps within 15 working days of the customs broker's last day of business. The comptroller shall refund an out-of-business customs broker an amount of \$2.10 for each returned unused stamp.

(6) As soon as practicable after discovery, a customs broker must report in writing to the comptroller the theft, destruction, or other loss of stamps issued to the customs broker, including the numbers assigned to the lost stamps (if the comptroller has numbered the stamps sequentially). No credit or refund will be allowed for stamps lost, destroyed, or stolen, unless the customs broker provides sufficient documentation that the stamps were stolen or destroyed.

(7) A customs broker must notify the comptroller as soon as practicable in writing if the customs broker has no remaining inventory of stamps following use, theft, and/or other loss of the stamps.

(k) Preparation of documentation. The comptroller will maintain a password-protected website that a licensed customs broker, or an authorized employee of a licensed customs broker, must use to prepare export certification forms.

(1) A licensed customs broker, or an authorized employee of a licensed customs broker, is required to use the website to prepare export certification forms and must provide all information as required by the comptroller. Failure to use the website to prepare export certification forms while the website is available is a violation under subsection (q) of this section.

(2) When the comptroller's website is available but a licensed customs broker, or an authorized employee of a licensed customs broker, is unable to use the system due to technical or communications problems, the licensed customs broker or authorized employee must notify the comptroller prior to issuing manual export certifications. The licensed customs broker, or authorized employee, may provide the notification by calling 1-888-434-5464 and following an automated menu to enter the licensed customs broker's 11-digit taxpayer number and the location number. The licensed customs broker, or authorized employee, must contact the comptroller again every 48-hours for as long as the customs broker is unable to use the website. The licensed customs broker, or authorized employee, must enter the export certification information using the website no later than 48-hours after the technical or communications problems are resolved.

(3) When the comptroller's website is unavailable due to routine maintenance by the comptroller or technical or communications problems experienced by the comptroller, a licensed customs broker, or an authorized employee of a licensed customs broker, may issue manual export certification forms without notifying the comptroller's office in advance. The licensed customs broker, or authorized employee, must enter such export certification information using the website within 48-hours after the website becomes available. Failure to enter such documentation no later than 48-hours is a violation under subsection (q) of this section.

(l) Reports required. A licensed customs broker is required to file a report quarterly on a form prescribed by the comptroller.

(1) The quarterly report must be signed by the licensed customs broker or by the licensed customs broker's duly authorized agent and must include the following information:

(A) the total value of property for which the licensed customs broker issued export certifications that quarter;

(B) the total amount of tax on property for which the licensed customs broker issued export certifications that quarter; and

(C) the total amount of tax refunded in accordance with export certifications issued by the licensed customs broker that quarter.

(2) The customs broker report is due on the 20th day of the month following the end of each calendar quarter reporting period. For example, the first quarter report period is January, February, and March, and the due date is April 20th. If the 20th is a Saturday, Sunday, or legal holiday, the report is due the next business day. To be considered timely, a report must be either postmarked or received by the comptroller on or before the due date of the report.

(3) Failure to receive the correct report form from the comptroller does not relieve a customs broker of the responsibility to file a report.

(4) A penalty of \$500 is imposed for each report filed after the due date. The comptroller shall also impose an additional \$50 penalty for each late report filed.

(m) Records required. A licensed customs broker must maintain books and records that include, at a minimum, the following:

(1) an exact photographic image of the export certification stamp and of each export certification form signed by the customs broker within the last two years. Carbon copies and pages from multi-page forms are acceptable in lieu of photocopies, provided the number of the export certification stamp affixed to the original is recorded on the additional copies;

(2) a ledger that:

(A) lists sequentially all export certification forms issued or voided within the last two years;

(B) identifies the person or persons who fully or partially prepared, issued, and/or signed each form; and

(C) identifies the person's or persons' relationship to the licensed customs broker;

(3) an inventory of export certification stamps and records tracking transfers of stamps between the customs broker and authorized employees, identifying the recipients and showing the dates of transfer, quantities transferred, the sequential numbers of the transferred stamps (if the comptroller has numbered the stamps sequentially), and detailed records regarding stamps that have been lost, stolen, or are otherwise unaccounted for;

(4) a current list of all employees authorized to fully or partially prepare, issue, and/or sign export certification forms and information relating to the hiring and termination of the authorized employees;

(5) all contracts executed between the customs broker and verification contractors and information relating to the termination or cancellation of such contracts;

(6) exact copies of all invoices, receipts, passports, laser visa identification cards, foreign voter registration picture identification, I-94 forms, air, land, or water travel documentation, or other documents relating to property whose export the customs broker has certified. This requirement specifically applies to documentation that must be verified by a customs broker under subsection (b)(3) of this section. The requirement also applies to other documentation if the customs broker attached such copies to the original form as provided in subsection (p)(6) of this section;

(7) a copy of a certified check, company check, or money order made payable to the purchaser, or a credit memo or cash receipt signed by the purchaser, and the purchaser's written assignment of the right to a Texas sales or use tax refund for each instance in which the customs broker obtained a refund assignment from the purchaser;

(8) detailed records showing the amount the customs broker charges clients for their [his] export certification services and the customs broker's gross receipts from certifying exports;

(9) information described in subsection (d) of this section, updated and kept current since the date of application; and

(10) detailed records of when an authorized employee is terminated, quits, is no longer authorized to complete export certification forms, or whose power of attorney is withdrawn. A licensed customs broker is required to notify the comptroller in writing within 15 days of the date when an authorized employee is subject to such action.

(n) Examination of records. A licensed customs broker must make all required records available for examination by the comptroller. The comptroller will issue written notice of routine examination of records at least 15 days prior to the date of examination. No advance notice will be issued if the comptroller determines that notice could jeopardize the proper enforcement of the tax laws and the comptroller's rules. The examination will take place at the customs broker's principal place of business unless the comptroller agrees to examine the records at another location.

(o) Retention of records. A licensed customs broker must retain records for a period of at least two years from the date of the document, the date of completion (if the required record is a contract), or the date of final entry (if the required record is a list or ledger). Copies of export certification forms must be retained for at least two years after the date the customs broker or the customs broker's authorized employee signs the form, regardless of the date of export. For other documents with multiple dates, the two-year period for retention begins on the latest date reflected on the document.

(p) Export certification form and contents. The export certification forms issued by a licensed customs broker must be substantially in the form recommended by the comptroller. A separate form must be completed for each seller. A maximum of six invoices from a single seller may be listed on a single export certification form only if all the listed items were exported at the same place, on the same date, and at the same time. The required information must be completed in English on the face of the form, in addition to any other language in which the form is completed. The comptroller may immediately confiscate from any person an export certification form that is incomplete on its face, indecipherable, fraudulent, or otherwise in violation of this section. An export certification form must, at a minimum, reflect the following information:

(1) the name and address of the purchaser of the property, as shown on the invoice, receipt, or similar document, or the purchaser's home address if the customs broker certified the export under subsection (b)(3) of this section;

(2) the name of the seller and the seller's location from which the property was sold;

(3) the name, address of the place of business which the customs broker certified the export, and Texas Customs Broker License number of the customs broker in whose name the export is being certified;

(4) the date (and time, if available) of sale, as shown on the invoice, receipt, or similar document;

(5) the date, time and exact location where the property was exported (e.g., the name of border crossing bridge or airport), unless export was verified as set out in subsection (b)(3) of this section;

(6) a description and quantity of the property; a list of Store Keeping Unit (SKU), Harmonization Systems, Schedule B or other product identification codes; or copies of invoices securely attached to the form and signed and dated individually by the customs broker or the customs broker's authorized employee;

(7) the invoice numbers (if any) and total sales prices and taxes of all property certified for export;

(8) the original signature of the licensed customs broker or the customs broker's authorized employee, together with a certification that the customs broker or authorized employee inspected the property and the original receipt for the property and that the property has been exported or will be exported under the verification requirements of subsection (b)(3) of this section;

(9) the name of the person who signed the form, typed or legibly printed near the signature;

(10) a valid export certification stamp whose expiration date falls within the same calendar quarter as the certification date (regardless of the date of sale);

(11) a sequential export certification form number assigned by the licensed customs broker;

(12) the purchaser's original signature and date; and

(13) the certification identification number assigned by the comptroller.

(q) License denial, suspension, and revocation. The comptroller may deny, suspend, or revoke a Texas Customs Broker License for cause.

(1) Grounds for denying a person's application for a Texas Customs Broker License include, but are not limited to:

(A) ineligibility for a license under subsection (c) of this section, including filing incomplete, false, or misleading information with the license application;

(B) disqualification for a license due to prior denial, United States Customs and Border Protection [Service] suspension, or revocation, as provided in this subsection;

(C) forfeiture of an entity's right to transact business or certificate of formation/registration, if the applicant is a taxable entity;

(D) failure to pay annual license fee; or

(E) failure to post bond or security as required by the comptroller.

(2) A person whose application for a Texas Customs Broker License has been denied may resubmit the application not sooner than 90 days after the date on which the comptroller's decision to deny the application becomes final. However, the comptroller may authorize reapplication at an earlier date if the comptroller determines it is warranted under the circumstances.

(3) Acts or omissions of a licensed customs broker, authorized employee, verification contractor, an officer or director, a general partner, or member (as applicable) that constitute cause for suspension or revocation of a license under this section include, but are not limited to:

(A) cancellation, suspension, or revocation by the United States Customs and Border Protection [Service] of the customs broker's license to act as a customs broker or cancellation of that license by the customs broker;

(B) violation of any provision of the Tax Code or the comptroller's rules;

(C) delivering to any person a signed and/or stamped export certification form if all or a portion of the property described thereon was not actually exported at the time and place and on the date reflected on the certification form, or not properly verified as property that will be exported as required in subsection (b)(3) of this section;

(D) delivering to any person a signed and/or stamped export certification form based solely on:

(i) foreign import documents, bills of lading, freight forwarder's receipts, or other documents that constitute valid proof of export in and of themselves under §3.323 of this title; or

(ii) proof of foreign citizenship;

(E) transferring an export certification stamp to a person other than the licensed customs broker or the customs broker's authorized employee, except if, at the time of transfer, the stamp is affixed to an export certification form issued in compliance with this section;

(F) delivering to any person an export certification form with knowledge that the recipient intends to use the form to evade tax that is legally due or to assist another person in the evasion of tax that is legally due;

(G) soliciting, advertising, or promoting the unlawful evasion of tax through use of export certification forms;

(H) knowingly making a false verbal or written statement to the comptroller;

(I) fully or partially preparing export certification forms at a location for which no Texas Customs Broker License has been issued;

(J) transferring signed and/or stamped export certification forms that are otherwise blank or incomplete at the time of transfer to a person other than the licensed customs broker or the customs broker's authorized employee in the ordinary course of business;

(K) failing to exercise responsible supervision and control over the conduct of export certification business, including inadequate supervision of authorized employees and verification contractors;

(L) failing to keep current in a correct, orderly, and itemized manner the records required under this section, failing to timely provide the comptroller with information required to be provided, or failing to account for all export certification stamps received from the comptroller;

(M) refusing the comptroller access to, concealing, removing, or destroying without the comptroller's prior written consent, the whole or any part of a record required to be kept under this section, or refusing to cooperate with the comptroller's investigation;

(N) attempting to unduly influence the comptroller by the use of a threat, false accusation, duress, or the offer of any special inducement or promise of advantage, or by bestowing any gift, favor, or other thing of value;

(O) withholding information from or knowingly imparting false information to a client;

(P) failing to timely return to the comptroller unused, expired export certification stamps as required by this section, absent a showing and timely report to the comptroller of loss by theft or accident;

(Q) selling or buying export certification forms and/or export certification stamps except as consistent with this section;

(R) seeking and/or obtaining under false pretenses a tax refund from a seller, including giving a false refund assignment to the seller or otherwise representing that the customs broker has the authority to obtain a refund of tax paid by another person if the customs broker does not have such authority;

(S) failing promptly to notify the seller, in writing, that an export certification form relating to that seller is for any reason incomplete, misleading, void, or otherwise invalid;

(T) failing to file quarterly customs broker report;

(U) failing to use the website for preparing documentation while the website is available, or, if the website becomes unavailable and the comptroller provides prior authorization, failing to promptly enter documentation using the website no later than 48 hours

after website becomes available or disabling or interfering with the proper functioning of the website in any manner;

(V) failing to pay tax, penalties, or interest that become due or are imposed by the comptroller under the provisions of the Tax Code or this section;

(W) failing to request a purchaser identification number; or

(X) failing to properly document each item to be exported on purchaser's original receipt by circling, and writing or stating "exported" next to each item, or failing to write or state on each original receipt the date and time the property was verified for export together with the full printed name of the person making the verification.

(4) After notice and hearing, the comptroller may suspend a license for no fewer than 60 days and no more than 120 days if the customs broker's license has not been previously suspended or revoked, for no fewer than 120 days and no more than 180 days if the customs broker's license has been previously suspended or revoked, or concurrently and for the same length of time as a suspension by the United States Customs and Border Protection [Service] of the customs broker's license to act as a customs broker. The suspension becomes effective on the date the comptroller's decision to suspend the license becomes final. Suspension of a license applies to all locations of the customs broker.

(5) After notice and hearing, the comptroller may revoke a customs broker's license indefinitely if the customs broker's license has been suspended at least twice previously or has been previously revoked, or if the customs broker's license to act as a customs broker has been revoked by the United States Customs and Border Protection [Service]. The revocation becomes effective on the date the comptroller's decision to revoke the license becomes final. Revocation of a license applies to all locations of the customs broker.

(6) A Texas Customs Broker License that has been revoked must be returned to the comptroller within 15 days of the effective date of revocation. A Texas Customs Broker License that has been suspended is reinstated automatically upon the expiration of the period of suspension, unless the licensee notifies the comptroller in writing that the license should not be reinstated. Not sooner than one year after the effective date of revocation, a person whose Texas Customs Broker License has been revoked may apply to the comptroller for reinstatement. The comptroller may reinstate the license if the person otherwise qualifies for a license as provided in this section and the comptroller is satisfied that the person has a good faith intent to comply with the tax laws and the comptroller's rules.

(7) For procedures relating to license denial, suspension, and revocation, see §3.361 of this title (relating to Practice and Procedure for Texas Customs Broker's License Denial, Suspension, and Revocation).

(8) The comptroller may require a customs broker to pay the comptroller the amount of any tax refunded if the customs broker does not comply with the Tax Code or this section. In addition to the amount of the refunded tax, the comptroller may require the customs broker pay a penalty of not less than \$500 dollars nor more than \$5,000. The comptroller may deduct any penalties to be paid by a customs broker from the customs broker's posted bond.

(9) A proceeding by the comptroller to require a customs broker to pay an amount under paragraph (8) of this subsection is a contested case in the same manner as a proceeding to suspend or revoke a customs broker's license under Tax Code, §151.157(f).

(r) Form of export certification. An export certification form must be substantially in the form of a Licensed Customs Broker Export Certification. Copies of the form may be obtained from the Comptroller of Public Accounts, Tax Policy Division, or be requested by calling 1-800-252-5555.

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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William Hamner

General Counsel for Tax Administration

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER C. TAX PROVISIONS

40 TAC §815.117

The Texas Workforce Commission (TWC) proposes the following new section to Chapter 815, relating to Unemployment Insurance:

Subchapter C. Tax Provisions, §815.117

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of amending the Chapter 815, Unemployment Insurance (UI) rules, is to implement the requirements of Senate Bill (SB) 2296, passed by the 86th Texas Legislature, Regular Session (2019), by providing clear guidelines for employers and the Agency regarding the circumstances in which an employer may designate a Common Paymaster for state unemployment tax reporting purposes.

On June 10, 2019, the Governor signed SB 2296 which amends §201.011(11) of the Texas Unemployment Compensation Act (TUCA). Effective January 1, 2020, the definition of "employing unit" includes a Common Paymaster as defined in 26 U.S.C. §3306(p) of the Federal Unemployment Tax Act (FUTA). Under this section "if two or more related corporations concurrently employ the same individual and compensate such individual through a Common Paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations." Under §201.011(11)(B), related corporations utilizing a Common Paymaster must still adhere to the requirements of TUCA Chapter 204, Subchapter E.

Currently, the Texas Workforce Commission's (Agency) Tax Department requires every employing unit to individually report wages for each of its employees. However, once SB 2296 becomes effective, certain related corporations will have the ability to designate one of those corporations as a Common Paymaster with respect to the employees that work concurrently for the related corporations.

Once approved by the Agency, the Common Paymaster will have the option to report the combined wages of any employee working for the Common Paymaster concurrently employed with one or more related corporations.

SB 2296 requires the Commission to adopt rules necessary to implement this new TUCA provision. The Commission recognizes that in order to properly implement SB 2296, the Commission will need to define certain terms and set parameters for eligible related corporations which have established an allowable Common Paymaster arrangement. These rules will need to address definitions for Common Paymaster, what constitute related corporations, and concurrent employment. Also required will be application procedures, TWC method of allocating taxes, useful examples, and how this new tax arrangement will affect claims for unemployment benefits.

A primary aim of these rules will be to reduce confusion concerning what constitutes an allowable Common Paymaster structure. For example, under a Common Paymaster arrangement, an employee must actually perform services concurrently for the Common Paymaster and each of the related corporations employing the individual for the Common Paymaster to take advantage of this wage reporting method.

This means that a Common Paymaster structure is in no way similar to a Professional Employer Organization relationship because there is no co-employment relationship and since an individual must actually perform services for the Common Paymaster. Similarly, because an individual must perform services for the Common Paymaster, for a group of related corporations to utilize this arrangement, the Common Paymaster cannot be a purely administrative entity without employees. Payrolling is still not allowable under a Common Paymaster arrangement.

An additional purpose of these rules is to closely align with FUTA, and its corresponding regulations, so that employers utilizing a Common Paymaster at the federal level can easily match the same standards at the state level. It should be noted that for administrative purposes under these proposed rules, a group of related corporations meeting all requirements may only designate a single Common Paymaster.

This new section is proposed pursuant to §201.011(11)(A), whereby the Legislature has required TWC's three-member Commission (Commission) to exercise rulemaking authority to administer the provisions of §201.011(11).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. TAX PROVISIONS

TWC proposes the following new section in Subchapter C:

§815.117. Employing Units: Common Paymaster

New Section 815.117 establishes parameters to be used by the Agency's Tax Department for instances in which related corpo-

rations that concurrently employ the same workers delegate one of their constituent corporations to serve as a Common Paymaster for employment tax reporting purposes.

New subsection (a) limits the scope of this new rule to implementation of the Common Paymaster provisions related to the definition of "employing unit" (§201.011(11)), with respect to proper administration of the TUCA as required by SB 2296, 86th Texas Legislature, Regular Session.

New subsection (b) stipulates the definitions which will apply under §201.011(11). Those are:

Common Paymaster -- A Common Paymaster of a group of two or more related corporations is the designated entity which disburses remuneration to concurrently employed individuals of the related corporations and is responsible for keeping books and records for the payroll with respect to those individuals. The following are also incorporated into this definition:

--The Common Paymaster is not required to disburse remuneration to all the employees of those two or more related corporations. However, this rule does not apply to any remuneration paid to an employee that is not paid through the Common Paymaster;

--A group of related corporations may only have one Common Paymaster for the group. A group of related corporations may not be subdivided to facilitate multiple Common Paymasters; and

--When two or more related corporations concurrently employ the same individual and compensate that individual through a Common Paymaster, the Common Paymaster being one of the related corporations for which the individual performs services, each of the corporations is considered to have paid only the remuneration it actually disburses to that individual, unless the disbursing corporation fails to remit the taxes due.

Related Corporations--Two or more corporations are considered related corporations for an entire calendar quarter if any of the following tests are satisfied at any time during that calendar quarter:

--Parent-subsidiary controlled group. The common parent corporation owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of at least one of its subsidiaries, AND one or more of the corporations, common parent included, owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each of the subsidiaries;

--Brother-sister controlled group. Five or fewer persons who are individuals, estates, or trusts own more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent such stock ownership is identical with respect to each such corporation;

--Combined group. A group of three or more corporations if each corporation is a member of either a parent-subsidiary controlled group of corporations or a brother-sister controlled group of corporations; and at least one of those corporations is the common parent of a parent-subsidiary controlled group and also is a member of a brother-sister controlled group;

--With respect to stock, when a corporation that does not issue stock is involved, corporations are related if either 50 percent or more of the members of one corporation's board of directors (or other governing body) are members of the other corporation's board of directors (or other governing body); or the holders of 50 percent or more of the voting power to select members of one corporation's board of directors (or other governing body) are concurrently the holders of more than 50 percent of that power with respect to the other corporation.

--With respect to concurrent officers and employees, corporations are related if 50 percent or more of one corporation's officers are concurrently officers of the other corporation; or 30 percent or more of one corporation's employees are concurrently employees of the other corporation.

Concurrent Employment--The simultaneous existence of an employment relationship between an individual and two or more corporations. Concurrent employment involves the performance of services by the individual for the benefit of the employing corporation, not merely for the benefit of the group of corporations, in exchange for remuneration. The following are also incorporated into this definition:

--The simultaneous existence of an employment relationship with each corporation is a decisive factor. If it exists, the fact that a particular employee is on leave or otherwise temporarily inactive is immaterial.

--Employment is not concurrent with respect to one of the related corporations if the employee's employment relationship with that corporation is completely nonexistent during the periods when the employee is not performing services for that corporation;

--An individual who does not perform substantial services for a corporation is presumed not employed by that corporation; and

--A corporation which has no employees performing services for it in Texas cannot be the Common Paymaster for Texas employees of its related corporations.

New subsection (c) provides for procedures for submission of and approval by the Agency of a Common Paymaster application.

--Related corporations which compensate their employees through a Common Paymaster must file with the Agency the details of their plan on a form prescribed by the Agency. The details must include the names of the related corporations, the name of the Common Paymaster corporation and the concurrently employed individuals involved. The filing shall include documentation to substantiate the corporations are related as defined in the rule and that employees are concurrently employed. An amendment to the plan must be filed whenever there is a change in the related corporations participating in the plan, a change in the Common Paymaster or a change in the concurrently employed individuals involved.

--Plans and plan amendments submitted under the rule must be filed within the 30-day period following the end of the calendar quarter in which the plan is in effect. Eligibility of an employee to be compensated through a Common Paymaster shall be determined on a quarterly basis.

New subsection (d) stipulates how employment taxes required under the TUCA are to be allocated.

--A Common Paymaster making disbursements on behalf of related corporations to concurrently employed individuals is

responsible for taxes, interest and penalties on all wages disbursed by it.

--If the Common Paymaster fails to remit taxes, interest and penalties on all wages disbursed by it as required, the Agency may hold each of the related corporations liable for a proportionate share of the obligation. "Proportionate share" may be based on sales, property, corporate payroll or any other reasonable basis that reflects the distribution of services of the pertinent employees between the related corporations. If there is no reasonable basis for allocating the amount owed, it shall be divided equally among the related corporations. If a related corporation fails to pay any amount allocated to it pursuant to this section, the Agency may hold any or all of the other related corporations liable for the full amount of the unpaid taxes, interest and penalties.

--A Common Paymaster is not a successor corporation pursuant to TUCA Chapter 204, Subchapter E, for concurrent employees unless the related corporation ceases operations and is acquired in its entirety by the corporation serving as the Common Paymaster.

--Wages paid by separate employing units may not be aggregated or combined for purposes of reporting, except as provided in this rule, unless there is an actual transfer of entity and experience rating as provided by TUCA Chapter 204, Subchapter E.

New subsection (e) describes benefit charging and notice procedures with respect to Common Paymaster arrangements.

--For purposes of charging benefits paid and mailing notices to base year employers, the Common Paymaster shall be considered the employer for all wages disbursed to individuals by it whether payment was for services performed for the common paymaster or for a related corporation.

--An employer seeking to establish a Common Paymaster arrangement must designate a mailing address for benefit claim notices with the Agency per §208.003 of the TUCA.

Finally, new subsection (f) provides examples for the public to clarify the definitions of "Common Paymaster," "Related Corporations," and "Concurrent Employment."

Common Paymaster:

--S, T, U, and V are related corporations with 2,000 employees collectively. Forty of these employees are concurrently employed and perform services for S and at least one other of the related corporations, during a calendar quarter. The four corporations arrange for S to disburse remuneration to thirty of these forty employees for their services. Under these facts, S is the common paymaster of S, T, U, and V with respect to the thirty employees. S is not a common paymaster with respect to the remaining employees.

Related Corporations:

Parent-subsidiary controlled group.

--P Corporation owns stock possessing 51 percent of the total combined voting power of all classes of stock entitled to vote of S Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P and S.

--Assume the same facts as in subsection (i). Assume further that S owns stock possessing 51 percent of the total value of shares of all classes of stock of X Corporation. P is the common parent of a parent-subsidiary controlled group consisting of

member corporations P, S, and X. The result would be the same if P, rather than S, owned the X stock.

--P Corporation owns 51 percent of the only class of stock of S Corporation and S, in turn, owns 30 percent of the only class of stock of X Corporation. P also owns 51 percent of the only class of stock of Y Corporation and Y, in turn, owns 30 percent of the only class of stock of X. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, X, and Y.

Brother-sister controlled group.

--The outstanding stock of corporations X and Y, which have only one class of stock outstanding, is owned by the following unrelated individuals: A owns 40% of X and 20% of Y; B owns 10% of X and 30% of Y; C owns 30% of X and 40% of Y; D owns 20% of X; and E owns 10% of Y. The result is that Corporations X and Y have 3 common owners - A, B, and C. D and E are disregarded from the brother-sister test because they don't have ownership in both companies. A, B, and C have the following Identical Ownership (the lesser of X or Y): A has 20%; B has 10%; and C has 30%. A, B, and C meet the identical ownership test because their identical ownership is more than 50 percent of X and Y.

Combined group.

--A, an individual, owns stock possessing 100 percent of the total combined voting power of all classes of the stock of corporations X and Y. Y, in turn, owns stock possessing 51 percent of the total combined voting power of all classes of the stock of corporation Z. X, Y, and Z are members of the same combined group since X, Y, and Z are each members of either a parent-subsidiary or brother-sister controlled group of corporations AND Y is the common parent of a parent-subsidiary controlled group of corporations consisting of Y and Z, and also is a member of a brother-sister controlled group of corporations consisting of X and Y.

--Assume the same facts as in subsection (i) and further assume that corporation X owns 51 percent of the total value of shares of all classes of stock of corporation S. X, Y, Z, and S are members of the same combined group.

Concurrent Employment:

--M, N, and O are related corporations which use N as a common paymaster. Their respective headquarters are located in three separate cities several hundred miles apart. A is an officer of M, N, and O who performs substantial services for each corporation. A does not work a set length of time at each corporate headquarters, and when A leaves one corporate headquarters, it is not known when A will return, although it is expected that A will return. Under these facts, A is concurrently employed by the three corporations.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by House Bill 1290, 85th Texas Legislature, Regular Session, 2017 (to be codified at Texas Government Code §2001.0045), does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to comply with legislative direction pursuant to SB 2296, 86th Texas Legislature, Regular Session.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed new section will be in effect:

--the proposed new section will not create or eliminate a government program;

--implementation of the proposed new section will not require the creation or elimination of employee positions;

--implementation of the proposed new section will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed new section will not require an increase or decrease in fees paid to TWC;

--the proposed new section will not create a new regulation;

--the proposed new section will not expand, limit, or eliminate an existing regulation;

--the proposed new section will not change the number of individuals subject to the rules; and

--the proposed new section will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rule will not have an adverse economic impact on small businesses or rural communities, as these proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Clay Cole, Interim Director, Unemployment Insurance Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide consistency to certain related corporations which use a Common Paymaster for federal tax reporting with respect to how they report wages under the TUCA.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Program Policy, attn.: Workforce Editing, 101 East 15th Street, Room 459T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rule is proposed under Texas Labor Code §201.011(11) and §301.0015 which provide the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of unemployment insurance services and activities.

The proposed rule affects Texas Labor Code, Title 4, Subtitle A, Texas Unemployment Compensation Act.

§815.117. Employing Units: Common Paymaster.

(a) Scope. This section shall govern the Texas Workforce Commission in its administration of the Common Paymaster provisions authorized under §201.011(11) of the Act.

(b) Definitions. The following definitions shall apply to §201.011(11) of the Act:

(1) Common Paymaster--A Common Paymaster of a group of related corporations is any member thereof that disburses remuneration to employees of two or more of those corporations on their behalf and that is responsible for keeping books and records for the payroll with respect to those employees. The following are also incorporated into this definition:

(A) The Common Paymaster is not required to disburse remuneration to all the employees of those two or more related corporations, but the provisions of this section do not apply to any remuneration to an employee that is not disbursed through a Common Paymaster;

(B) A group of related corporations may only have one Common Paymaster for the group. A group of related corporations may not be subdivided to facilitate multiple Common Paymasters; and

(C) When two or more related corporations concurrently employ the same individual and compensate that individual through a Common Paymaster, which is one of the related corporations for which the individual performs services, each of the corporations is considered to have paid only the remuneration it actually disburses to that individual, unless the disbursing corporation fails to remit the taxes due.

(2) Related Corporations--Two or more corporations shall be considered related corporations for an entire calendar quarter if they satisfy any of the following tests at any time during that calendar quarter:

(A) Parent-subsidiary controlled group. The common parent corporation owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of at least one of its subsidiaries, AND one or more of the corporations, common parent included, owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each of the subsidiaries;

(B) Brother-sister controlled group. Five or fewer persons who are individuals, estates, or trusts own more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent such stock ownership is identical with respect to each such corporation;

(C) Combined group. A group of three or more corporations if:

(i) Each such corporation is a member of either a parent-subsidiary controlled group of corporations or a brother-sister controlled group of corporations; and

(ii) At least one of such corporations is the common parent of a parent-subsidiary controlled group and also is a member of a brother-sister controlled group;

(D) When a corporation that does not issue stock is involved, either:

(i) 50 percent or more of the members of one corporation's board of directors (or other governing body) are members of the other corporation's board of directors (or other governing body); or

(ii) The holders of 50 percent or more of the voting power to select members of one corporation's board of directors (or other governing body) are concurrently the holders of more than 50 percent of that power with respect to the other corporation;

(E) 50 percent or more of one corporation's officers are concurrently officers of the other corporation; or

(F) 30 percent or more of one corporation's employees are concurrently employees of the other corporation.

(3) Concurrent Employment--means the simultaneous existence of an employment relationship between an individual and two

or more corporations. Such a relationship contemplates the performance of services by the individual for the benefit of the employing corporation, not merely for the benefit of the group of corporations, in exchange for remuneration. The following are also incorporated into this definition:

(A) The simultaneous existence of an employment relationship with each corporation is a decisive factor. If it exists, the fact that a particular employee is on leave or otherwise temporarily inactive is immaterial;

(B) Employment is not concurrent with respect to one of the related corporations if the employee's employment relationship with that corporation is completely nonexistent during the periods when the employee is not performing services for that corporation;

(C) An individual who does not perform substantial services for a corporation is presumed not employed by that corporation; and

(D) A corporation which has no employees performing services for it in Texas cannot be the Common Paymaster for Texas employees of its related corporations.

(c) Submission and approval of Common Paymaster.

(1) Related corporations which compensate their employees through a Common Paymaster shall file with the Agency the details of their plan on a form prescribed by the Agency. The details shall include the names of the related corporations, the name of the Common Paymaster corporation and the concurrently employed individuals involved. The filing shall include documentation to substantiate the corporations are related as defined in subsection (b)(2) of this section and that employees are the concurrently employed. An amendment to the plan shall be filed whenever there is a change in the related corporations participating in the plan, a change in the Common Paymaster or a change in the concurrently employed individuals involved.

(2) Plans and plan amendments submitted pursuant to this rule shall be filed within the 30-day period following the end of the calendar quarter in which the plan is in effect. Eligibility of an employee to be compensated through a Common Paymaster shall be determined on a quarterly basis.

(d) Allocation of employment taxes.

(1) A Common Paymaster making disbursements on behalf of related corporations to employed individuals shall be responsible for taxes, interest and penalties on all wages disbursed by it.

(2) If the Common Paymaster fails to remit taxes, interest and penalties on all wages disbursed by it as required:

(A) the Agency may hold each of the related corporations liable for a proportionate share of the obligation. Such proportionate share may be based on sales, property, corporate payroll or any other reasonable basis that reflects the distribution of services of the pertinent employees between the related corporations; or

(B) if there is no reasonable basis for allocating the amount owed, it shall be divided equally among the related corporations. If a related corporation fails to pay any amount allocated to it pursuant to this section, the Agency may hold any or all of the other related corporations liable for the full amount of the unpaid taxes, interest and penalties.

(3) A Common Paymaster is not a successor corporation pursuant to Texas Labor Code Chapter 204, Subchapter E, for concurrent employees unless the related corporation ceases operations and is acquired in its entirety by the paymaster corporation.

(4) Wages paid by separate employing units may not be aggregated or combined for purposes of reporting, except as provided in this rule, unless there is an actual transfer of entity and experience rating as provided by Texas Labor Code Chapter 204, Subchapter E.

(e) Benefits.

(1) For purposes of charging benefits paid and mailing notices to base year employers, the Common Paymaster shall be considered the employer for all wages disbursed to individuals by the Common Paymaster whether payment was for services performed for the Common Paymaster or for a related corporation.

(2) An employer seeking to establish a Common Paymaster arrangement shall designate a mailing address for benefit claim notices with the Agency per §208.003 of the Act.

(f) Examples.

(1) Common Paymaster. S, T, U, and V are related corporations with 2,000 employees collectively. Forty of these employees are concurrently employed and perform services for S and at least one other of the related corporations, during a calendar quarter. The four corporations arrange for S to disburse remuneration to thirty of these forty employees for their services. Under these facts, S is the Common Paymaster of S, T, U, and V with respect to the thirty employees. S is not a Common Paymaster with respect to the remaining employees.

(2) Related Corporations:

(A) Parent-subsidiary controlled group.

(i) P Corporation owns stock possessing 51 percent of the total combined voting power of all classes of stock entitled to vote of S Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P and S.

(ii) Assume the same facts as in clause (i) of this subparagraph. Assume further that S owns stock possessing 51 percent of the total value of shares of all classes of stock of X Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, and X. The result would be the same if P, rather than S, owned the X stock.

(iii) P Corporation owns 51 percent of the only class of stock of S Corporation and S, in turn, owns 30 percent of the only class of stock of X Corporation. P also owns 51 percent of the only class of stock of Y Corporation and Y, in turn, owns 30 percent of the only class of stock of X. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, X, and Y.

(B) Brother-sister controlled group. The outstanding stock of corporations X and Y, which have only one class of stock outstanding, is owned by the following unrelated individuals: A owns 40% of X and 20% of Y; B owns 10% of X and 30% of Y; C owns 30% of

X and 40% of Y; D owns 20% of X; and E owns 10% of Y. The result is that Corporations X and Y have 3 common owners - A, B, and C. D and E are disregarded from the brother-sister test because they don't have ownership in both companies. A, B, and C have the following Identical Ownership (the lesser of X or Y): A has 20%; B has 10%; and C has 30%. A, B, and C meet the identical ownership test because their identical ownership is more than 50 percent of X and Y.

(C) Combined group.

(i) A, an individual, owns stock possessing 100 percent of the total combined voting power of all classes of the stock of corporations X and Y. Y, in turn, owns stock possessing 51 percent of the total combined voting power of all classes of the stock of corporation Z. X, Y, and Z are members of the same combined group since X, Y, and Z are each members of either a parent-subsidiary or brother-sister controlled group of corporations AND Y is the common parent of a parent-subsidiary controlled group of corporations consisting of Y and Z, and also is a member of a brother-sister controlled group of corporations consisting of X and Y.

(ii) Assume the same facts as in clause (i) of this subparagraph and further assume that corporation X owns 51 percent of the total value of shares of all classes of stock of corporation S. X, Y, Z, and S are members of the same combined group.

(3) Concurrent Employment. M, N, and O are related corporations which use N as a Common Paymaster. Their respective headquarters are located in three separate cities several hundred miles apart. A is an officer of M, N, and O who performs substantial services for each corporation. A does not work a set length of time at each corporate headquarters, and when A leaves one corporate headquarters, it is not known when A will return, although it is expected that A will return. Under these facts, A is concurrently employed by the three corporations.

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 September 25, 2019.

TRD-201903473

Jason Vaden

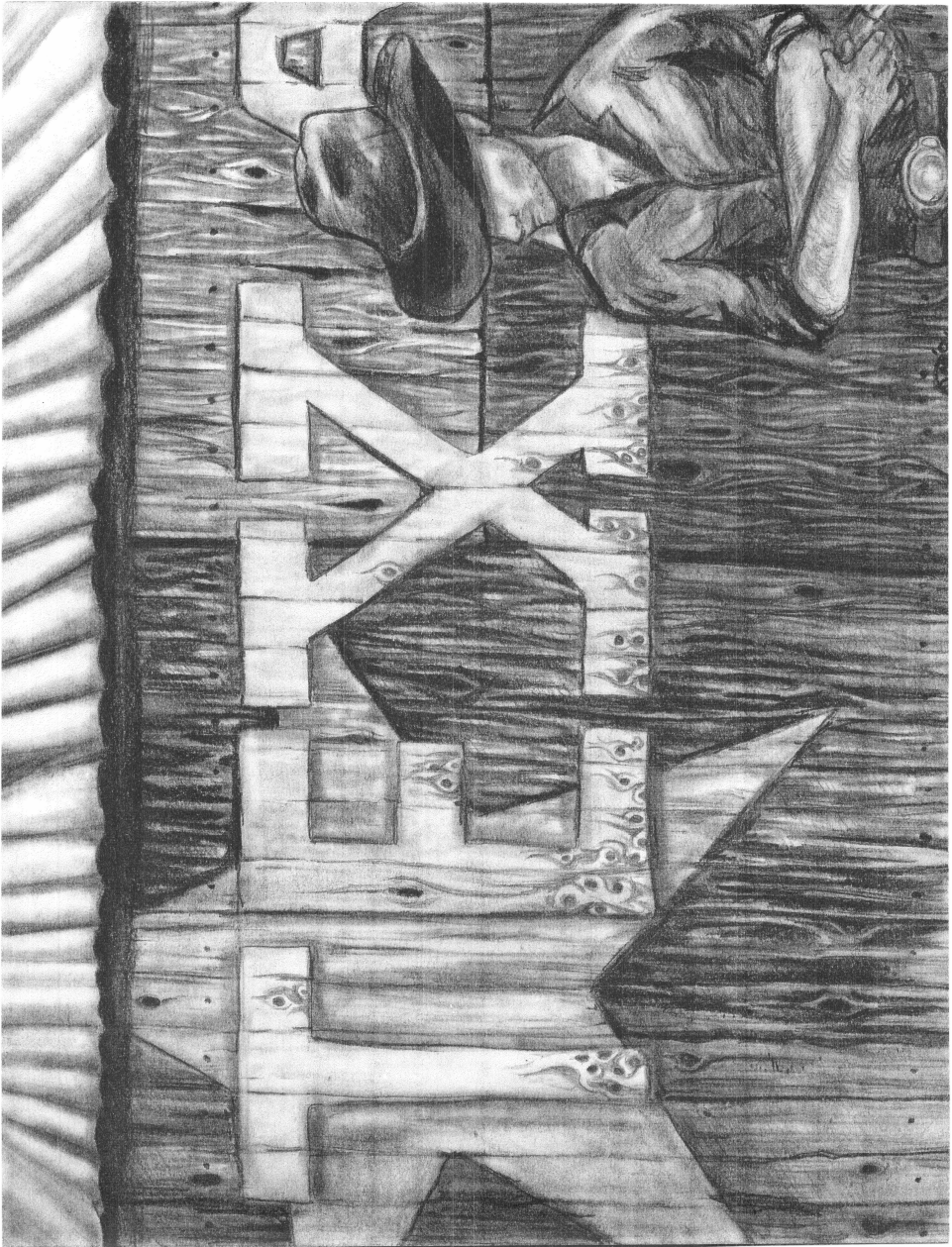
Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: November 10, 2019

For further information, please call: (512) 680-1655





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES

16 TAC §34.2

The Texas Alcoholic Beverage Commission adopts amendments to §34.2, Schedule of Sanctions and Penalties for Health, Safety, and Welfare Violations, without changes to the proposed text as published in the August 2, 2019, issue of the *Texas Register* (44 TexReg 3997). The rule will not be republished.

Alcoholic Beverage Code §11.61(b)(7) authorizes the Commission to suspend or cancel a permit if it is found that "the place or manner in which the permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency." Similarly, Code §61.71 authorizes the Commission to suspend or cancel a license if it is found that the licensee "conducted the licensee's business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people."

In 2019, the 86th Texas Legislature passed House Bill 1545, which added Alcoholic Beverage Code §1.08:

Sec.1.08. PREVENTION OF HUMAN TRAFFICKING. It is the intent of the legislature to prevent human trafficking at all permitted and licensed premises, and all provisions of this code shall be liberally construed to carry out this intent, and it shall be a duty and priority of the commission to adhere to a zero tolerance policy of preventing human trafficking and related practices.

The Code prohibits engaging in conduct constituting or relating to human trafficking. For example, Code §11.44 makes a person ineligible for a permit or license for a period of three years if the person voluntarily surrendered the person's permit or license prior to a hearing for an offense involving human trafficking. Code §11.46(c) makes any premises ineligible for a period of one year if a permit or license has been canceled at the premises as a result of human trafficking. And Code §11.64(a) requires suspension of a permit or license without the option of paying a civil penalty if the basis for the suspension is an offense of human trafficking.

The amendments to §34.2 assess a penalty of cancellation for an offense of human trafficking.

No comments were received.

The amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the 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 September 27, 2019.

TRD-201903488

Clark E. Smith

General Counsel

Texas Alcoholic Beverage Commission

Effective date: October 17, 2019

Proposal publication date: August 2, 2019

For further information, please call: (512) 206-3367



CHAPTER 35. ENFORCEMENT SUBCHAPTER D. PLACE OR MANNER

16 TAC §35.31

The Texas Alcoholic Beverage Commission adopts amendments to §35.31, Offenses Against the General Welfare, without changes to the proposed text as published in the August 2, 2019, issue of the *Texas Register* (44 TexReg 3998). No comments were received.

Alcoholic Beverage Code §11.61(b)(7) authorizes the Commission to suspend or cancel a permit if it is found that "the place or manner in which the permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency." Similarly, Code §61.71 authorizes the Commission to suspend or cancel a license if it is found that the licensee "conducted the licensee's business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people."

In 2019, the 86th Texas Legislature passed House Bill 1545, which added Alcoholic Beverage Code §1.08:

Sec.1.08. PREVENTION OF HUMAN TRAFFICKING. It is the intent of the legislature to prevent human trafficking at all permitted and licensed premises, and all provisions of this code shall be liberally construed to carry out this intent, and it shall be a duty and priority of the commission to adhere to a zero tolerance policy of preventing human trafficking and related practices.

The Code prohibits engaging in conduct constituting or relating to human trafficking. For example, Code §11.44 makes a person ineligible for a permit or license for a period of three years if the person voluntarily surrendered the person's permit or license prior to a hearing for an offense involving human trafficking. Code §11.46(c) makes any premises ineligible for a period of one year if a permit or license has been canceled at the premises as a result of human trafficking. And Code §11.64(a) requires suspension of a permit or license without the option of paying a civil penalty if the basis for the suspension is an offense of human trafficking.

Rule §35.31 identifies the types of conduct that constitute an offense against the general welfare in violation of certain provisions of the Code. These offenses include, for example, sexual offenses described in Chapter 21 of the Penal Code, weapon offenses described in Chapter 46 of the Penal Code, and gambling offenses described in Chapter 47 of the Penal Code. The amendments add offenses under Chapter 20A of the Penal Code, relating to trafficking of persons.

The amendments are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the 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 September 27, 2019.

TRD-201903489

Clark E. Smith

General Counsel

Texas Alcoholic Beverage Commission

Effective date: October 17, 2019

Proposal publication date: August 2, 2019

For further information, please call: (512) 206-3367



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER II. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL ALLOTMENT

19 TAC §§61.1091 - 61.1099

The Texas Education Agency (TEA) adopts the repeal of §§61.1091-61.1099, concerning the high school allotment. The repeal is adopted without changes to the proposed text as published in the July 12, 2019 issue of the *Texas Register* (44 TexReg 3497) and will not be republished. The adopted repeal is necessary because the statutory authority for the subchapter was repealed by House Bill (HB) 3, 86th Texas Legislature, 2019, effective September 1, 2019.

REASONED JUSTIFICATION: Texas Education Code (TEC), §42.2516(b)(3), added by the 79th Texas Legislature, Third Called Session, 2006, and amended by the 80th Texas Legislature, 2007, provided for an allotment of \$275 for each student in average daily attendance in Grades 9-12 in a school district.

This allotment is known as the high school allotment. Statutory authority for the high school allotment was later codified in TEC, §42.160.

Additional legislation from the 79th Texas Legislature, Third Called Session, 2006, authorized the commissioner to adopt rules related to the recognition of high school completion and success and college readiness programs and required the commissioner to adopt rules related to permissible uses of the high school allotment.

HB 3, 81st Texas Legislature, Regular Session, 2009, revised the criteria a district must meet to be able to use high school allotment funds on any instructional program in Grades 6-12 other than an athletic program.

The commissioner exercised rulemaking authority to implement the high school allotment by adopting Chapter 61, Subchapter II, effective November 9, 2006. Amendments to the rules were adopted effective March 3, 2010, and April 26, 2016.

HB 3, §4.001, 86th Texas Legislature, 2019, removed the statutory authority for the high school allotment by repealing TEC, §§39.233, 39.234, and 42.160, effective September 1, 2019. The repeal of Chapter 61, Subchapter II, is necessary since there is no longer statutory authority for the rules.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 12, 2019, and ended August 12, 2019. No public comments were received.

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §39.233, which permits the commissioner of education to adopt rules to recognize high school completion and success and college readiness programs; TEC, §39.234, which requires the commissioner to adopt rules related to the permissible use of funds allocated under the annual high school allotment; TEC, §42.160, which requires the commissioner to adopt rules to administer the annual high school allotment; and House Bill 3, §4.001, 86th Texas Legislature, 2019, which repealed TEC, §§39.233, 39.234, and 42.160.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§39.233, 39.234, and 42.160, repealed by House Bill 3, §4.001, 86th Texas Legislature, 2019.

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 September 27, 2019.

TRD-201903482

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: October 17, 2019

Proposal publication date: July 12, 2019

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



CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF

THE ACADEMIC CONTENT AREAS TESTING PROGRAM
DIVISION 2. PARTICIPATION AND ASSESSMENT REQUIREMENT FOR GRADUATION

19 TAC §101.3022

The Texas Education Agency (TEA) adopts an amendment to §101.3022, concerning assessment requirements for graduation. The amendment is adopted without changes to the proposed text as published in the July 26, 2019 issue of the *Texas Register* (44 TexReg 3755) and will not be republished. The adopted amendment modifies the rule to reflect changes in statute made by Senate Bill (SB) 213, 86th Texas Legislature, 2019, and updates expiration dates.

REASONED JUSTIFICATION: Section 101.3022 requires students to achieve satisfactory performance on the end-of-course (EOC) assessments listed in the Texas Education Code (TEC), §39.023(c), to be eligible to receive a high school diploma. The rule also specifies an exception, as authorized by the TEC, §28.0258, that allows a student who has failed to achieve the EOC assessment graduation requirements for no more than two courses to receive a Texas high school diploma if the student has qualified to graduate by means of an individual graduation committee. The rule currently states that the individual graduation committee provision expires on September 1, 2019.

SB 213, 86th Texas Legislature, 2019, amended the TEC, §28.0258, to extend the expiration date of the provision that allows eligible students to qualify to graduate by means of an individual graduation committee to September 1, 2023. To implement SB 213, the proposed amendment would modify the rule by extending the expiration date to September 1, 2023.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 26, 2019, and ended August 26, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: An individual commented that language in §101.3022(e)(3) should be clarified with respect to awarding a diploma.

Response: The agency disagrees. Issues of responsibility for awarding a diploma are outside the scope of the proposed rule-making.

Comment: An individual commented that language in §101.3022(e)(3) should be clarified with respect to whether students must take EOC assessments more than once to qualify for graduation.

Response: The agency disagrees. Section 101.3022(e)(3) states that a school district "must provide a student an opportunity to retake an EOC assessment." The rule does not indicate that the student must retake the EOC assessment.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §28.0258, as amended by SB 213, 86th Texas Legislature, 2019, which extends the expiration date for an individual graduation committee to determine if a student who has failed to comply with the end-of-course (EOC) assessment instrument performance requirements in the TEC, §39.025, is qualified to graduate. The expiration date changed

from September 1, 2019, to September 1, 2023. Subsection (k) requires the commissioner to adopt rules to implement the section; TEC, §39.023(c), which requires the agency to adopt EOC assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history; and TEC, §39.025(a-2), as amended by SB 213, 86th Texas Legislature, 2019, which extends the expiration date to allow a student who has failed to perform satisfactorily on EOC assessment instruments to receive a high school diploma if the student qualifies for graduation under the TEC, §28.0258. The expiration date changed from September 1, 2019, to September 1, 2023. SB 213 also redesignates subsection (a-2) as subsection (a-5).

CROSS REFERENCE TO STATUTE. Texas Education Code, §§28.0258, as amended by SB 213, 86th Texas Legislature, 2019; 39.023(c); and 39.025(a-2), as amended by SB 213, 86th Texas Legislature, 2019.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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Proposal publication date: July 26, 2019

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



19 TAC §101.3024

The Texas Education Agency (TEA) adopts an amendment to §101.3024, concerning assessment requirements for students first enrolled in Grade 9 prior to 2011-2012 school year or first enrolled in Grade 10 or above in 2011-2012 school year. The amendment is adopted without changes to the proposed text as published in the July 26, 2019 issue of the *Texas Register* (44 TexReg 3756) and will not be republished. The adopted amendment modifies the rule to reflect changes in statute made by Senate Bill (SB) 213, 86th Texas Legislature, 2019, and updates an expiration date.

REASONED JUSTIFICATION: Section 101.3024 allows former students, who were required to pass all or certain parts of the exit-level tests for graduation, to earn a high school diploma through alternative options. Specifically, subsection (g) allows a former student to receive a high school diploma if the former student has qualified to graduate in accordance with Texas Education Code (TEC), §28.02541. The rule stated that this provision expires on September 1, 2019.

SB 213, 86th Texas Legislature, 2019, amended the TEC, §28.02541, to extend the expiration date of the provision that allows certain former students who have completed the curriculum requirements for graduation but have not performed satisfactorily on assessment instruments to qualify for a high school diploma to September 1, 2023. To implement SB 213, the adopted amendment modifies the rule by extending the expiration date to September 1, 2023.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 26, 2019, and ended August 26, 2019. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §28.02541, as amended by SB 213, 86th Texas Legislature, 2019, which extends the expiration date for districts to determine whether certain former students, who have met curriculum requirements for graduation but have not performed satisfactorily on an assessment instrument, may qualify to graduate and receive a high school diploma. The expiration date changed from September 1, 2019, to September 1, 2023. Subsection (f) requires the commissioner to adopt rules to implement the section; and TEC, §39.025, which establishes the secondary-level performance required to receive a Texas high school diploma, establishes alternate assessment options for students who entered Grade 9 prior to the 2011-2012 school year or Grade 10 or above in the 2011-2012 school year, and requires the commissioner to establish satisfactory performance levels on the alternate assessments.

CROSS REFERENCE TO STATUTE. Texas Education Code, §28.02541, as amended by SB 213, 86th Texas Legislature, 2019, and §39.025.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 151. COMMISSIONER'S RULES CONCERNING PASSING STANDARDS FOR EDUCATOR CERTIFICATION EXAMINATIONS

19 TAC §151.1001

The Texas Education Agency (TEA) adopts an amendment to §151.1001, concerning passing standards for educator certification examinations. The amendment is adopted with changes to the proposed text as published in the August 16, 2019 issue of the *Texas Register* (44 TexReg 4287) and will be republished. The adopted amendment to 19 TAC §151.1001 implements the requirements of Texas Education Code (TEC), §21.048(a), for the commissioner to determine the satisfactory level of performance required for each certification examination by adding passing standards for additional pedagogical examinations and new passing standards for content certification examinations.

REASONED JUSTIFICATION: TEC, §21.048(a), requires the commissioner of education to establish the satisfactory levels of performance required on educator certification examinations and require a satisfactory level of performance on each core subject covered by an examination.

Section 151.1001 specifies the passing standards for all pedagogical and content certification examinations as approved by the commissioner. In subsection (b)(14), the adopted amendment establishes the passing standards for the edTPA assessments as successful completion of the assessments to align with the assessment pilot period. The amendment also adopts passing standards for the content certification examinations in new subsection (b)(15). The passing standards were established by subject-matter expert stakeholder committee groups and include a new set of examinations.

The average passing standard is expressed as an average raw cut score of all active forms of a test or the minimum proficiency level. It is critical to note that the actual raw cut scores may vary slightly from form to form to balance the overall difficulty of the test yet maintain consistency in scoring.

A change to the figure in subsection (b)(14) was made since published as proposed. A definition for *complete* has been added to reflect a scorable portfolio, which includes receiving no more than one condition code per task. This definition is aligned with messaging to the field regarding the definition of *complete* and is necessary to ensure that candidates are completing the portfolio assessment with quality.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 16, 2019, and ended September 16, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: Amarillo Independent School District (ISD) commented that edTPA would lead to a decline in teachers entering the profession.

Response: The agency disagrees. TEA staff compared enrollment/completion data of states with edTPA policy and those without from 2010-2016. Staff found that the differences between states with edTPA policy and those without were quite small and that there was a national trend of declining enrollment and completion during those years that accounted for the difference. The available evidence does not show a decline in entering teachers caused by edTPA.

Comment: Amarillo ISD commented that there was no research behind the success of edTPA.

Response: The agency disagrees. There are currently positive, early indications from North Carolina and Washington that edTPA has positive links to teacher performance and retention. Education Policy Initiative at Carolina found that overall, these predictive validity results show that edTPA measures significantly predict first-year teacher performance. Goldhaber, Cowan, and Theobald (2016) found that edTPA scores were "highly predictive of employment in the state's public teaching workforce" and continuous edTPA scores are a "significant predictor of student mathematics achievement in some specifications."

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §21.048(a), which requires the commissioner to determine the level of performance considered to be satisfactory on educator certification examinations and further authorizes the commissioner to require a satisfactory level of performance on each core subject covered by an examination.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.048(a).

§151.1001. *Passing Standards.*

(a) As required by the Texas Education Code, §21.048(a), the commissioner of education shall determine the satisfactory level of performance for each educator certification examination and require a satisfactory level of performance on each core subject covered by an examination. The figures in this section identify the passing standards established by the commissioner for educator certification examinations.

(b) The figures in this subsection identify the passing standards established by the commissioner for classroom teacher examinations.

(1) The figure in this paragraph identifies the passing standards for early childhood through Grade 6 examinations.

Figure: 19 TAC §151.1001(b)(1) (No change.)

(2) The figure in this paragraph identifies the passing standards for Grades 4-8 examinations.

Figure: 19 TAC §151.1001(b)(2) (No change.)

(3) The figure in this paragraph identifies the passing standards for secondary mathematics and science examinations.

Figure: 19 TAC §151.1001(b)(3) (No change.)

(4) The figure in this paragraph identifies the passing standards for secondary English language arts and social studies examinations.

Figure: 19 TAC §151.1001(b)(4) (No change.)

(5) The figure in this paragraph identifies the passing standards for speech and journalism examinations.

Figure: 19 TAC §151.1001(b)(5) (No change.)

(6) The figure in this paragraph identifies the passing standards for fine arts examinations.

Figure: 19 TAC §151.1001(b)(6) (No change.)

(7) The figure in this paragraph identifies the passing standards for health and physical education examinations.

Figure: 19 TAC §151.1001(b)(7) (No change.)

(8) The figure in this paragraph identifies the passing standards for computer science and technology applications examinations.

Figure: 19 TAC §151.1001(b)(8) (No change.)

(9) The figure in this paragraph identifies the passing standards for career and technical education examinations.

Figure: 19 TAC §151.1001(b)(9) (No change.)

(10) The figure in this paragraph identifies the passing standards for bilingual examinations.

Figure: 19 TAC §151.1001(b)(10) (No change.)

(11) The figure in this paragraph identifies the passing standards for languages other than English (LOTE) examinations.

Figure: 19 TAC §151.1001(b)(11) (No change.)

(12) The figure in this paragraph identifies the passing standards for special education examinations.

Figure: 19 TAC §151.1001(b)(12) (No change.)

(13) The figure in this paragraph identifies the passing standards for supplemental examinations.

Figure: 19 TAC §151.1001(b)(13) (No change.)

(14) The figure in this paragraph identifies the passing standards for pedagogy and professional responsibilities examinations.

Figure: 19 TAC §151.1001(b)(14)

(15) The figure in this paragraph identifies the passing standards for content certification examinations.

Figure: 19 TAC §151.1001(b)(15)

(c) The figure in this subsection identifies the passing standards established by the commissioner for student services examinations.

Figure: 19 TAC §151.1001(c) (No change.)

(d) The figure in this subsection identifies the passing standards established by the commissioner for administrator examinations.

Figure: 19 TAC §151.1001(d) (No change.)

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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Cristina De La Fuente-Valadez

Director, Rulemaking

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

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

The State Board for Educator Certification (SBEC) adopts amendments to §§228.2, 228.35, and 228.40, the repeal of §228.17, and new §228.17 and §228.33, concerning requirements for educator preparation programs. The amendments to §§228.2, 228.35, and 228.40, the repeal of §228.17, and new §228.33 are adopted without changes to the proposed text as published in the May 31, 2019 issue of the *Texas Register* (44 TexReg 2658) and will not be republished. New §228.17 is adopted with changes to the proposed text as published in the May 31, 2019 issue of the *Texas Register* (44 TexReg 2658) and will be republished. The adopted revisions establish requirements for intensive pre-service, for educator preparation program (EPP) name changes, and for a candidate seeking certification in two categories to have clinical teaching in both.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 228, Requirements for Educator Preparation Programs, establish the requirements for EPPs. The adopted revisions add intensive pre-service as an optional preparation and certification pathway, define and establish the requirements of intensive pre-service, and establish an implementation date for the intensive pre-service option.

The adopted revisions address a need to provide guidance in rule for instances where EPPs desire a name change following a change in ownership and also require a candidate who has a second certification category to have clinical teaching in both certification categories. Current rules do not address these issues.

Some of the changes correspond to amendments to 19 TAC Chapter 230, Professional Educator Preparation and Certification, which are published in the Adopted Rules section of this issue, and to amendments to 19 TAC Chapter 227, Provisions

for Educator Preparation Programs, which were published in the Proposed Rules section of the August 23, 2019 issue of the *Texas Register*.

The following describes the adopted revisions.

§228.2. *Definitions.*

The adopted amendment in §228.2(7) adds the phrase, "may contain one or more certification categories," and deletes the phrase, "also known as a certification field," from the definition of *certification class* to clarify that a class of certificate may contain one or more categories within a certification. For example, the certificate classes include superintendent, principal, classroom teacher, reading specialist, master teacher, school librarian, school counselor, and educational diagnostician, as specified in 19 TAC §230.33. As indicated in 19 TAC Chapter 233, certificates in the classroom teacher class have various categories such as English Language Arts and Reading, Social Studies, Special Education, and Health. This adopted amendment better distinguishes between a class and a category since a category is a subgroup of a class.

The adopted amendment in §228.2(20) defines intensive pre-service as an educator assignment supervised through an EPP that may lead to an intern and probationary certification and subsequently, the completion of a standard certificate. Intensive pre-service provides a candidate the opportunity to practice content pedagogy and pedagogy skills in a classroom setting with support before serving in the role as the classroom teacher of record.

§228.17. *Change of Ownership and Name Change.*

Adopted new §228.17 includes a new subsection title, *Change of Ownership and Name Change* (currently *Change of Ownership*) that encompasses the new rule that allows EPPs to change their names when they change ownership, but not otherwise. This change is necessary to account for instances where programs change ownership, and the new owners desire a different name. The adopted new rule does not allow a program to change its name unless it has both a recent change in ownership that has been reported to Texas Education Agency (TEA) staff within 10 days of the change and a current accreditation status of "Accredited" or "Accredited-Not Rated." These changes will better preserve the integrity of the accreditation system and prevent programs from confusing the public with frequent name changes. To enforce this and ensure EPP compliance, the adopted new rule allows for TEA staff to recommend an accreditation status of "Accredited-Probation" immediately when a program fails to inform TEA staff regarding its name change. Further, under 19 TAC §229.4, Determination of Accreditation Status, an EPP's accreditation can be revoked after it has been on "Accredited-Probation" status for one year. Current §228.17 has been adopted for repeal as a result of adopted new §228.17.

Since published as proposed, the SBEC approved a change to §228.17(d) to accurately reflect the status of "Accredited-Probation." This change is a technical edit necessary to align these rules with the accreditation statuses listed in TEC, §21.0451(a)(1), and 19 TAC §229.4, Determination of Accreditation Status.

§228.33. *Intensive Pre-Service.*

Pre-service experience is important to student success, and the adopted new rule encourages EPPs to offer pre-service training and bring the benefit of clinical teaching to alternative certification and post-baccalaureate candidates. The adopted new rule

allows a candidate with an intern certificate or probationary certificate to move into a role as teacher of record by passing the subject-matter only examination and successfully completing the intensive pre-service training requirements. A candidate does not need to take the content pedagogy examination for issuance of the intern certificate.

The adopted new rule does not mandate that EPPs offer intensive pre-service; it is an option for programs to apply to use this route. A candidate taking this route is still held to the same testing requirements after issuance of their intern certificate and is encouraged to take the performance assessment to pair practice-based preparation with a practice-based assessment. The requirement for issuance of a standard certificate includes the completion of all required assessments as defined in Figure: 19 TAC §230.21(e).

Adopted new §228.33(a) establishes the programmatic requirements of intensive pre-service prior to issuance of an intern certificate, including an intensive program with a minimum of four consecutive weeks, a minimum of 12 instructional days with one hour of supervised instruction per day, and a minimum of four face-to-face observation/feedback coaching sessions provided by a qualified coach that include observations of at least 15 minutes and coaching meetings that are a minimum of 30 minutes.

Adopted new §228.33(b) specifies the requirements a candidate coach must have to offer the observation and feedback sessions described in adopted new §228.33(a).

Adopted new §228.33(c) specifies the eligibility criteria for a candidate seeking the intern certificate via intensive pre-service. Adopted subsection (c)(1) provides a cross reference to the requirements of concurrently adopted new §230.36(f) that further describes requirements for obtaining the intern certificate for intensive pre-service. Section 228.33(c)(3) provides a cross reference to commissioner's rule in 19 TAC §150.1002 that governs teacher appraisals and specifies the Texas Teacher Evaluation and Support System (T-TESS) Rubric and includes the dimensions of T-TESS and performance measures that a candidate needs to meet as further criteria for obtaining the intern certificate via intensive pre-service. This applies to all certification categories except for Special Education EC-12 (candidates are required to pass the Special Education Supplemental) and bilingual (candidates are required to pass the Bilingual Target Language Proficiency or related language proficiency exam).

Adopted new §228.33(d) specifies the criteria by which an intensive pre-service candidate could be eligible for a probationary certificate, as indicated in concurrently adopted new §230.37(f).

Adopted new §228.33(e) sets the implementation date of the intensive pre-service training to on or after January 1, 2020.

Figure: 19 TAC Chapter 228 - Preamble

§228.35. *Preparation Program Coursework and/or Training.*

The adopted amendment to §228.35(e)(2)(A) adds language to specify clinical teaching requirements for a candidate seeking initial certification in only one subject area or in more than one subject area. This parallels the experience requirements for an intern teacher seeking certification in more than one certification category so that a candidate would have clinical teaching in both certification categories. Under the current rule, a candidate for certification in two categories can complete his or her clinical teaching in just one of the two categories, leaving no practical classroom experience in the other certification category. This allows a candidate to become fully certified in both categories

without clinical teaching experience in both categories. Under the adopted language, candidates need to have a primary assignment that is not less than an average of four hours each day in the subject area and grade level of certification sought, and the EPP needs to be approved to offer preparation in the certification category required for the additional assignment, to provide ongoing support for each assignment as prescribed in §228.35(g), and to provide coursework and training for each assignment to adequately prepare the candidate to be effective in the classroom. In addition, the campus administrator will need to agree to assign a qualified cooperating teacher appropriate to each assignment. The adopted revisions also include conforming technical edits.

The adopted amendment in §228.35(e)(8)(C) adds a reference to the intern certificate rule in §230.36. The current reference only refers to the probationary certificate.

Adopted new §228.35(g)(7) adds language for an all-level clinical teaching assignment requirement for a candidate seeking certification in an additional area to include an assignment that involves certification in more than one certification category that cannot be taught concurrently during the same period of the school day. This addresses instances where a candidate cannot be observed for both areas during the same observation. For example, science and physical education cannot be observed concurrently and will require separate observations for each area.

The adopted amendment in §228.35(e)(2)(B)(viii) includes a conforming technical edit.

§228.40. Assessment and Evaluation of Candidates for Certification and Program Improvement.

The adopted amendment in §228.40(b) aligns the certification requirements with changes to the examinations that candidates take for admission to an EPP that distinguish subject-matter-only content certification examinations from content pedagogy examinations required for standard certification. The adopted amendment deletes the phrase, "unless a candidate passes the appropriate content certification examination(s) as a requirement for admission to an EPP" to clarify that the EPP is responsible for ensuring that each candidate is adequately prepared to pass the appropriate content pedagogy examination(s) required for certification, unless that content pedagogy test can be used for admission purposes for the low-incidence language tests such as Portuguese, Russian, etc.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 31, 2019, and ended July 1, 2019. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the July 26, 2019 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: A member of a Texas EPP expressed concern about needing two semesters for clinical teaching assignments when seeking an additional area of certification.

Response: The SBEC disagrees. The proposed text allows for an additional assignment to be less than four hours each day during the 14 weeks provided the primary assignment is not less than an average of four hours each day in the subject area and grade level of certification sought.

Comment: A member of a Texas EPP expressed concern about the proposed language that would not allow the program to have two seven-week placements.

Response: The SBEC disagrees. The proposed text does not preclude the use of two seven-week placements to fulfill the clinical teaching requirement.

Comment: One Texas EPP member commented that the proposed amendments do not meet the legislative requirement found in TEC, §21.0441.

Response: The SBEC disagrees. TEC, §21.0441, states that a content certification examination may be administered by a vendor approved by the commissioner for purposes of administering such an examination for the year for which the person is applying for admission to the program. The proposed definition of content certification examination complies with the statute as an examination used for the purposes of candidate admission.

Comment: One Texas EPP member suggested that the Praxis II series be used for purposes of the content certification examination.

Response: The SBEC disagrees. The Praxis II assessments do not match the number and scope of current Texas certifications. After reviewing the list of Praxis II assessments, 20 of the 51 initial certification fields do not have a corresponding Praxis II assessment. In addition, it is unclear if the assessments that do correspond have the adequate alignment to the Texas Essential Knowledge and Skills (TEKS).

Comment: A member of a Texas EPP expressed concern requiring coaches (educators who provide guidance and feedback to teacher candidates) to hold certificates in the same grades and content areas in which they will serve as coaches.

Response: The SBEC disagrees. There is confusion between definitions of classes of certificates (principal, teacher, school counselor, etc.) and categories of certificates (the teacher category of certifications includes English language arts and reading, mathematics, science, etc.). Coaches must be certified in the same certificate class (in this case for teachers) as the candidates they are observing.

Comment: Two members of educational nonprofit organizations and one member of a Texas EPP expressed support for intensive pre-service to produce high quality, effective teachers.

Response: The SBEC agrees. Intensive pre-service is a proven method to ensure a teaching candidate is ready on day one to plan and deliver quality instruction in the classroom.

Comment: A member of a Texas EPP expressed concern over the additional testing that is required for standard certification.

Response: The SBEC disagrees. This requirement is not mandated, and the Pre-Admission Content Test (PACT) route is an option that programs may choose for admission purposes. The current PACT assessment that requires a demonstration of pedagogy is not fair for candidates who are just starting their program.

The SBOE took no action on the review of amendments to §§228.2, 228.35, and 228.40, the repeal of §228.17, and new §228.17 and §228.33 at the September 13, 2019 SBOE meeting.

19 TAC §§228.2, 228.17, 228.33, 228.35, 228.40

STATUTORY AUTHORITY. The amendments and new sections are adopted under the Texas Education Code (TEC), §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing

rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.044, as amended by SBs 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.0442(c), as added by House Bill (HB) 3349, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to ensure that an educator preparation program (EPP) requires at least 80 hours of instruction for a candidate seeking a Trade and Industrial Workforce Training certificate; TEC, §21.0443, which requires the SBEC to establish rules for the approval and renewal of EPPs; TEC, §21.0453, which states that the SBEC may propose rules as necessary to ensure that all EPPs provide the SBEC with accurate information; TEC, §21.0454, which requires the SBEC to develop a set of risk factors to assess the overall risk level of each EPP and use the set of risk factors to guide the TEA in conducting monitoring, inspections, and evaluations of EPPs; TEC, §21.0455, which requires the SBEC to propose rules necessary to establish a process for complaints to be directed against an EPP; TEC, §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; TEC, §21.0485, which states the issuance requirements for certification to teach students with visual impairments; TEC, §21.0487(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; TEC, §21.0489(c), as added by Senate Bill (SB) 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017, which states the eligibility for an Early Childhood: Prekindergarten-Grade 3 certificate; TEC, §21.049(a), which authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs; TEC, §21.0491, as added by HB 3349, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which states that a person who applies for a teaching certificate for which board rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under Chapter 28, Subchapter A; TEC, §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; TEC, §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of

higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; and Texas Occupations Code, §55.007, which provides that verified military service, training, and education be credited toward licensing requirements.

CROSS REFERENCE TO STATUTE. The amendments and new sections implement the Texas Education Code (TEC), §§21.031; 21.041(b)(1) and (2); 21.044, as amended by Senate Bills (SBs) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017; 21.0442(c), as added by House Bill (HB) 3349, 85th Texas Legislature, Regular Session, 2017; 21.0443; 21.0453; 21.0454; 21.0455; 21.046(b); 21.0485; 21.0487(c); 21.0489(c), as added by SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017; 21.049(a); 21.0491, as added by HB 3349, 85th Texas Legislature, Regular Session, 2017; 21.050; 21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017; and the Texas Occupations Code, §55.007.

§228.17. *Change of Ownership and Name Change.*

(a) An educator preparation program (EPP) that changes ownership shall notify the Texas Education Agency (TEA) staff of the change of ownership in writing within 10 days of the change.

(b) A change of ownership is any agreement to transfer the control of an EPP. The control of an EPP is considered to have changed:

(1) in the case of ownership by an individual, when more than 50% of the EPP has been sold or transferred;

(2) in the case of ownership by a partnership or a corporation, when more than 50% of the owning partnership or corporation has been sold or transferred; or

(3) in the case of ownership by a board of directors, officers, shareholders, or similar governing body, when more than 50% of the ownership has changed.

(c) An EPP may not change its name unless it has notified TEA of a change of ownership within the preceding 90 days and has an SBEC accreditation status of "Accredited" or "Accredited--Not Rated." The EPP shall notify TEA staff of the name change in writing.

(d) TEA staff shall recommend an accreditation status of "Accredited--Probation" in accordance with §229.4(e)(2) of this title (relating to Determination of Accreditation Status) for any EPP that fails to notify TEA staff timely regarding a change in ownership or a change of program name.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497



19 TAC §228.17

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.044, as amended by SBs 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.0442(c), as added by House Bill (HB) 3349, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to ensure that an educator preparation program EPP requires at least 80 hours of instruction for a candidate seeking a Trade and Industrial Workforce Training certificate; TEC, §21.0443, which requires the SBEC to establish rules for the approval and renewal of EPPs; TEC, §21.0453, which states that the SBEC may propose rules as necessary to ensure that all EPPs provide the SBEC with accurate information; TEC, §21.0454, which requires the SBEC to develop a set of risk factors to assess the overall risk level of each EPP and use the set of risk factors to guide the TEA in conducting monitoring, inspections, and evaluations of EPPs; TEC, §21.0455, which requires the SBEC to propose rules necessary to establish a process for complaints to be directed against an EPP; TEC, §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; TEC, §21.0485, which states the issuance requirements for certification to teach students with visual impairments; TEC, §21.0487(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; TEC, §21.0489(c), as added by Senate Bill (SB) 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017, which states the eligibility for an Early Childhood: Prekindergarten-Grade 3 certificate; TEC, §21.049(a), which authorizes the SBEC to

adopt rules providing for educator certification programs as an alternative to traditional EPPs; TEC, §21.0491, as added by HB 3349, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which states that a person who applies for a teaching certificate for which board rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under Subchapter A, Chapter 28; TEC, §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; TEC, §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; and Texas Occupations Code, §55.007, which provides that verified military service, training, and education be credited toward licensing requirements.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code (TEC), §§21.031; 21.041(b)(1) and (2); 21.044, as amended by Senate Bills (SBs) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017; 21.0442(c), as added by House Bill (HB) 3349, 85th Texas Legislature, Regular Session, 2017; 21.0443; 21.0453; 21.0454; 21.0455; 21.046(b); 21.0485; 21.0487(c); 21.0489(c), as added by SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017; 21.049(a); 21.0491, as added by HB 3349, 85th Texas Legislature, Regular Session, 2017; 21.050; 21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017; and the Texas Occupations Code, §55.007.

§228.17. *Change of Ownership.*

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) adopts amendments to §§231.47, 231.81, 231.97, 231.125, 231.133, 231.241, 231.291, 231.301, 231.331, 231.397, 231.583, and 231.591; new §231.177 and §231.259, and the repeal of §§231.661, 231.663, 231.665, 231.671, 231.673, and 231.675, concerning requirements for public school personnel. The amendments are adopted without changes to the proposed text as published in the May 31, 2019 issue of the *Texas Register* (44 TexReg 2684) and will not be republished. The adopted revisions incorporate courses approved by the State Board of Education (SBOE), update the list of credentials appropriate for placement into an assignment, make technical edits, and delete an outdated subchapter.

REASONED JUSTIFICATION: Chapter 231, Requirements for Public School Personnel Assignments, provides guidance to school districts by listing courses by grade level and subject area and identifying the corresponding certificates appropriate for placement into each classroom assignment or administrative role. This information assists districts with hiring and personnel assignment decisions.

The adopted revisions to 19 Texas Administrative Code (TAC) Chapter 231, Subchapters C, D, and E, identify and align the appropriate SBEC-issued certificates to SBOE-approved courses and ensure accurate placement of qualified individuals into campus assignments. To reflect courses approved by the SBOE and make other necessary updates, the adopted revisions to 19 TAC Chapter 231 are described below.

Subchapter C, Grades 6-8 Assignments.

§231.47. English as a Second Language, Grades 6-8.

The adopted amendment to §231.47 add two new SBOE-approved courses, English Learners Language Arts, Grade 7, and English Learners Language Arts, Grade 8, and provide clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

§231.81. Dance, Middle School 1-3.

The adopted amendment to §231.81 adds the Dance: Grades 6-12 certificate to the list of credentials appropriate to teach these courses.

Subchapter D, Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments.

§231.97. Innovative Course.

The adopted amendment to §231.97 requires that teacher qualifications specified in the approved innovative course descriptions must be satisfied to determine eligibility to teach an innovative course.

Subchapter E, Grades 9-12 Assignments.

Adopted changes to 10 of the 25 divisions within Subchapter E are listed below by division:

Division 1. English Language Arts and Reading, Grades 9-12 Assignments.

§231.125. English as a Second Language, Grades 9-12.

The adopted amendment to §231.125 adds the new SBOE-approved TEKS-based course, English Language Development and Acquisition (ELDA), Grades 9-12, and provides clarity for district personnel to place educators with the appropriate credentials into classroom assignments.

§231.133. Speech, Grades 9-12.

The adopted amendment to §231.133(a) and (b) deletes the duplicative reference to Professional Communications from this section of the rule, as the course also appears in §231.331, Professional Communications, Grades 9-12. Adopted changes ensure that the course and list of credentials appropriate for placement into the assignment only appear in §231.331, Professional Communications, Grades 9-12.

Division 3. Social Studies, Grades 9-12 Assignments.

§231.177. Ethnic Studies: Mexican American Studies, Grades 9-12.

Adopted new §231.177 adds a section into rule to support new ethnic studies courses approved by the SBOE and additional approved courses in the future.

Division 7. Fine Arts, Grades 9-12 Assignments.

§231.241. Art, Music, Theatre, and Dance, Grades 9-12.

The adopted amendment to §231.241(b) includes Music Studies and offers clarification in the field about the series of courses covered in this section. The adopted amendment to subsection (c) includes Technical Theatre and offers further clarification in the field about the series of courses covered in this section. The adopted amendment to subsection (d) removes the reference to Fine Arts credit, as the emphasis on this course satisfying the requirements for this credit is no longer needed and may cause unnecessary confusion by offering guidance to students about one course. The best source for graduation requirements and course credit options for all students can be found on the Texas Education Agency website. Adopted new subsection (e) provides guidance on the assignment to teach a new SBOE-approved course, International Baccalaureate Film Standard Level and Higher Level, Grades 9-12.

Division 8. Technology Applications, Grades 9-12 Assignments.

§231.259. Cybersecurity, Grades 9-12.

Adopted new §231.259 adds two new TEKS-based courses adopted by the SBOE, Foundations of Cybersecurity, Grades 9-12, and Cybersecurity Capstone and provides guidance on the assignment to teach the courses.

Division 10. Agriculture, Food, and Natural Resources, Grades 9-12 Assignments.

§231.291. Floral Design, Grades 9-12.

The adopted amendment to §231.291 adds art certificates back to the list of credentials appropriate to teach Floral Design, Grades 9-12, as this course is aligned with Art, Level 1.

Division 11. Architecture and Construction, Grades 9-12 Assignments.

§231.301. Principles of Architecture; Principles of Construction, Grades 9-12.

The adopted amendment to §231.301 adds agriculture certificates to the list of credentials appropriate to teach these courses because holders of these certificates are already qualified to teach these courses at the advanced level. The adopted amendment is in response to written public testimony provided at the February 2019 SBEC meeting. Adopted changes also provide for conforming technical edits.

Division 12. Arts, Audio Video Technology, and Communications, Grades 9-12 Assignments.

§231.331. Professional Communications, Grades 9-12.

The adopted amendment to §231.331 deletes two certificates, Mathematics/Physical Science/Engineering: Grades 6-12 and Mathematics/Physical Science/Engineering: Grades 8-12 certificates, added in error from the list of credentials appropriate to teach this course. The adopted amendment also resolves previous issues with a duplicate listing of this course in two sections of the rule: English Language Arts and Reading and Career and Technical Education. Adopted changes eliminate the duplicate reference for this course, consolidate the list of certificates appropriate for placement into the assignment, and emphasize that the school district is responsible for ensuring that each teacher assigned to teach Professional Communications, Grade 9-12, has completed appropriate education and/or training in effective communication strategies and demonstrates proficiency in oral and written communication. Adopted changes also provide for conforming technical edits.

Division 15. Finance, Grades 9-12 Assignments.

§231.397. Accounting II, Grades 9-12.

The adopted amendment to §231.397 expands the list of certifications appropriate to teach this course and mirror the requirements established for §231.395, Financial Mathematics, Grades 9-12, since this course may count for advanced mathematics credit.

Division 24. Science, Technology, Engineering, and Mathematics, Grades 9-12 Assignments.

§231.583. Robotics I, Grades 9-12.

The adopted amendment to §231.583 adds physics/mathematics certificates to the list of credentials appropriate to teach this course because holders of these certificates are already qualified to teach the advanced level of this course. The adopted amendment is in response to written public testimony provided at the February 2019 SBEC meeting. Adopted changes also provide for conforming technical edits.

Division 25. Transportation, Distribution, and Logistics, Grades 9-12 Assignments.

§231.591. Transportation, Distribution, and Logistics, Grades 9-12.

The adopted amendment to §231.591(a) adds technology education certificate back to the list of credentials appropriate to teach these courses to cover staffing needs that have resulted in the removal of this provision. The adopted amendment is in response to written public testimony provided at the February 2019 SBEC meeting. Adopted changes also provide for conforming technical edits.

Subchapter H, Assignments for Teachers Certified Before 1966.

The adopted repeal removes this subchapter as the dated provision for those certified prior to September 1, 1962, through September 1, 1966, is outdated and the assignment for those educators certified before 1966 into classroom teaching assignments or administrative roles is provided in the remaining subchapters of 19 TAC Chapter 231.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 31, 2019, and ended July 1, 2019. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the July 26, 2019 meeting in accordance with the SBEC board

operating policies and procedures. No public comments were received on the proposal.

The SBOE took no action on the review of amendments to §§231.47, 231.81, 231.97, 231.125, 231.133, 231.241, 231.291, 231.301, 231.331, 231.397, 231.583, and 231.591; new §231.177 and §231.259, and the repeal of §§231.661, 231.663, 231.665, 231.671, 231.673, and 231.675 at the September 13, 2019 SBOE meeting.

SUBCHAPTER C. GRADES 6-8 ASSIGNMENTS

19 TAC §231.47, §231.81

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. ELECTIVES, DISCIPLINARY COURSES, LOCAL CREDIT COURSES, AND INNOVATIVE COURSES, GRADES 6-12 ASSIGNMENTS

19 TAC §231.97

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or

teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. GRADES 9-12 ASSIGNMENTS

DIVISION 1. ENGLISH LANGUAGE ARTS AND READING, GRADES 9-12 ASSIGNMENTS

19 TAC §231.125, §231.133

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 3. SOCIAL STUDIES, GRADES 9-12 ASSIGNMENTS

19 TAC §231.177

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 7. FINE ARTS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.241

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 8. TECHNOLOGY APPLICATIONS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.259

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC,

Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 10. AGRICULTURE, FOOD, AND NATURAL RESOURCES, GRADES 9-12 ASSIGNMENTS

19 TAC §231.291

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 11. ARCHITECTURE AND CONSTRUCTION, GRADES 9-12

19 TAC §231.301

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 12. ARTS, AUDIO/VIDEO TECHNOLOGY, AND COMMUNICATIONS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.331

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, edu-

ational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 15. FINANCE, GRADES 9-12 ASSIGNMENTS

19 TAC §231.397

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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Proposal publication date: May 31, 2019
For further information, please call: (512) 475-1497



DIVISION 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.583

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 25. TRANSPORTATION, DISTRIBUTION, AND LOGISTICS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.591

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. ASSIGNMENTS FOR TEACHERS CERTIFIED BEFORE 1966 DIVISION 1. DEPARTMENTALIZED CLASSROOMS, GRADES 6-8 ASSIGNMENTS

19 TAC §§231.661, 231.663, 231.665

STATUTORY AUTHORITY. The repeals are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession.

It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The repeals implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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



DIVISION 2. DEPARTMENTALIZED CLASSROOMS, GRADES 9-12 ASSIGNMENTS

19 TAC §§231.671, 231.673, 231.675

STATUTORY AUTHORITY. The repeals are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. It further states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The repeals implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1)-(2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.12

Introduction. The Texas Board of Nursing (Board) adopts amendments to §217.12, concerning Unprofessional Conduct. The amendments are adopted with changes to the proposed text published in the August 23, 2018, issue of the *Texas Register* (44 TexReg 4457); however, the changes are not substantive in nature and only correct existing punctuation errors in paragraphs (1)(A) and (1)(G). These are the only changes being adopted.

Reasoned Justification. The amendments are adopted under the authority of the Texas Occupations Code §56.003 and Senate Bill (SB) 37, enacted by the 86th Texas Legislature, effective June 7, 2019.

SB 37 prohibits agencies from taking disciplinary action, including denial and licensure suspension, against an individual's license based upon the individual's default or breach of a student loan repayment contract. The adopted amendments are necessary to conform to this statutory change. Specifically, the adopted rule eliminates the failure of an individual to repay a student loan from the enumerated list of acts that constitute unprofessional conduct, for which an individual may be disciplined.

How the Section Will Function. A licensee may be disciplined for acts of unprofessional conduct, which are enumerated in §217.12. The rule eliminates an individual's failure to repay a guaranteed student loan from this list.

Summary of Comments. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §301.151 and §56.003.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 56.003 provides that a licensing authority may not take disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including by denying the person's application for a license or license renewal; suspending the person's license; or taking other disciplinary action against the person.

§217.12. *Unprofessional Conduct.*

The following unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify behaviors in the practice of nursing that are likely to deceive, defraud, or injure clients or the public. Actual injury to a client need not be established. These behaviors include but are not limited to:

(1) Unsafe Practice--actions or conduct including, but not limited to:

(A) Carelessly failing, repeatedly failing, or exhibiting an inability to perform vocational, registered, or advanced practice nursing in conformity with the standards of minimum acceptable level of nursing practice set out in §217.11 of this chapter;

(B) Failing to conform to generally accepted nursing standards in applicable practice settings;

(C) Improper management of client records;

(D) Delegating or assigning nursing functions or a prescribed health function when the delegation or assignment could reasonably be expected to result in unsafe or ineffective client care;

(E) Accepting the assignment of nursing functions or a prescribed health function when the acceptance of the assignment could be reasonably expected to result in unsafe or ineffective client care;

(F) Failing to supervise the performance of tasks by any individual working pursuant to the nurse's delegation or assignment; or

(G) Failure of a clinical nursing instructor to adequately supervise or to assure adequate supervision of student experiences.

(2) Failure of a chief administrative nurse to follow standards and guidelines required by federal or state law or regulation or by facility policy in providing oversight of the nursing organization and nursing services for which the nurse is administratively responsible.

(3) Failure to practice within a modified scope of practice or with the required accommodations, as specified by the Board in granting an encumbered license or any stipulated agreement with the Board.

(4) Conduct that may endanger a client's life, health, or safety.

(5) Inability to Practice Safely--demonstration of actual or potential inability to practice nursing with reasonable skill and safety to clients by reason of illness, use of alcohol, drugs, chemicals, or any other mood-altering substances, or as a result of any mental or physical condition.

(6) Misconduct--actions or conduct that include, but are not limited to:

(A) Falsifying reports, client documentation, agency records or other documents;

(B) Failing to cooperate with a lawful investigation conducted by the Board;

(C) Causing or permitting physical, emotional or verbal abuse or injury or neglect to the client or the public, or failing to report same to the employer, appropriate legal authority and/or licensing board;

(D) Violating professional boundaries of the nurse/client relationship including but not limited to physical, sexual, emotional or financial exploitation of the client or the client's significant other(s);

(E) Engaging in sexual conduct with a client, touching a client in a sexual manner, requesting or offering sexual favors, or language or behavior suggestive of the same;

(F) Threatening or violent behavior in the workplace;

(G) Misappropriating, in connection with the practice of nursing, anything of value or benefit, including but not limited to, any property, real or personal of the client, employer, or any other person or entity, or failing to take precautions to prevent such misappropriation;

(H) Providing information which was false, deceptive, or misleading in connection with the practice of nursing;

(I) Failing to answer specific questions or providing false or misleading answers in a licensure or employment matter that could reasonably affect the decision to license, employ, certify or otherwise utilize a nurse; or

(J) Offering, giving, soliciting, or receiving or agreeing to receive, directly or indirectly, any fee or other consideration to or from a third party for the referral of a client in connection with the performance of professional services.

(7) Failure to pay child support payments as required by the Texas Family Code §232.001, et seq.

(8) Drug Diversion--diversion or attempts to divert drugs or controlled substances.

(9) Dismissal from a board-approved peer assistance program for noncompliance and referral by that program to the Board.

(10) Other Drug Related--actions or conduct that include, but are not limited to:

(A) Use of any controlled substance or any drug, prescribed or unprescribed, or device or alcoholic beverages while on duty or on call and to the extent that such use may impair the nurse's ability to safely conduct to the public the practice authorized by the nurse's license;

(B) Falsification of or making incorrect, inconsistent, or unintelligible entries in any agency, client, or other record pertaining to drugs or controlled substances;

(C) Failing to follow the policy and procedure in place for the wastage of medications at the facility where the nurse was employed or working at the time of the incident(s);

(D) A positive drug screen for which there is no lawful prescription; or

(E) Obtaining or attempting to obtain or deliver medication(s) through means of misrepresentation, fraud, forgery, deception and/or subterfuge.

(11) Unlawful Practice--actions or conduct that include, but are not limited to:

(A) Knowingly aiding, assisting, advising, or allowing an unlicensed person to engage in the unlawful practice of vocational, registered or advanced practice nursing;

(B) Violating an order of the Board, or carelessly or repetitively violating a state or federal law relating to the practice of vocational, registered or advanced practice nursing, or violating a state or federal narcotics or controlled substance law;

(C) Aiding, assisting, advising, or allowing a nurse under Board Order to violate the conditions set forth in the Order; or

(D) Failing to report violations of the Nursing Practice Act and/or the Board's rules and regulations.

(12) Leaving a nursing assignment, including a supervisory assignment, without notifying the appropriate personnel.

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 September 27, 2019.

TRD-201903479

Jena Abel

Deputy General Counsel

Texas Board of Nursing

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Proposal publication date: August 23, 2019

For further information, please call: (512) 305-6822



CHAPTER 222. ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY

22 TAC §222.5

Introduction. The Texas Board of Nursing (Board) adopts amendments to §222.5, concerning Prescriptive Authority Agreement. The amendments are adopted without changes to the proposed text published in the August 23, 2019, issue of the *Texas Register* (44 TexReg 4458) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Texas Occupations Code §157.0512(e) and (f) and House Bill (HB) 278, enacted by the 86th Texas Legislature, effective September 1, 2019.

HB 278 simplifies the existing statutory requirements related to prescriptive authority agreements by eliminating the necessity of face-to-face meetings between a delegating physician and an advanced practice registered nurse (APRN) and requiring monthly meetings between the parties. The adopted amendments are necessary to conform to these statutory changes.

A prescriptive authority agreement is still required to specify the general process for communication and sharing of information between the parties related to the care and treatment of patients. Further, the periodic meetings between the parties must still include the sharing of information related to patient treatment and care, needed changes in patient care plans, issues relating to referrals, and discussion of patient care improvement. However, HB 278 allows the parties to determine the manner in which the meetings will take place and only mandates monthly meetings. Parties are still permitted, of course, to meet face-to-face and more frequently than once a month if they choose to do so.

How the Section Will Function. Adopted §222.5(c)(9) requires a prescriptive authority agreement to describe a prescriptive authority quality assurance and improvement plan and to specify methods for documenting the implementation of the plan. The agreement must include periodic meetings between a physician and an APRN and must occur at least once a month, in a manner determined by the physician and the APRN. The adopted amendments also eliminate references to the former manner of

calculating the required frequency of meetings between a delegating physician and APRN.

Summary of Comments. The Board did not receive any comments on the proposal.

Statutory Authority. The amendments are adopted under the Occupations Code §301.151 and §157.0512(e) and (f).

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 157.0512(e) provides that a prescriptive authority agreement must, at a minimum: be in writing and signed and dated by the parties to the agreement; state the name, address, and all professional license numbers of the parties to the agreement; state the nature of the practice, practice locations, or practice settings; identify the types or categories of drugs or devices that may be prescribed or the types or categories of drugs or devices that may not be prescribed; provide a general plan for addressing consultation and referral; provide a plan for addressing patient emergencies; state the general process for communication and the sharing of information between the physician and the APRN to whom the physician has delegated prescriptive authority related to the care and treatment of patients; if alternate physician supervision is to be utilized, designate one or more alternate physicians who may provide appropriate supervision on a temporary basis in accordance with the requirements established by the prescriptive authority agreement and the requirements of this subchapter; and participate in the prescriptive authority quality assurance and improvement plan meetings required under this section; and describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that include chart review, with the number of charts to be reviewed determined by the physician and APRN ; and periodic meetings between the APRN and the physician.

Section 157.0512(f) provides that the periodic meetings described by Subsection (e)(9)(B) must include the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals; and discussion of patient care improvement; be documented; and take place at least once a month in a manner determined by the physician and the APRN.

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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Jena Abel

Deputy General Counsel

Texas Board of Nursing

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For further information, please call: (512) 305-6822



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission or agency) has completed its Rule Review of 30 TAC Chapter 11, Contracts, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the April 26, 2019, issue of the *Texas Register* (44 TexReg 2173).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 11 provide the general procedures concerning the commission's contract operations. The rules define the procedures for vendors to protest procurement selections and provide the procedures for resolving contract claims. For contracts procured pursuant to the methods described in Texas Government Code, §2261.003, the rules define the process for contract monitoring and the roles and responsibilities for agency staff. The rules also adopt by reference the Texas Comptroller of Public Account's rules relating to Historically Underutilized Businesses, Competitive Sealed Bidding, and Competitive Sealed Proposals.

The rules in Chapter 11 are necessary to implement the requirements in Texas Government Code, Chapters 2156, 2161, 2260, and 2261; and Texas Water Code, Chapter 5.

Public Comment

The public comment period closed on May 28, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 11 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201903531

David Timberger

Director, General Law Division

Texas Commission on Environmental Quality

Filed: October 1, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 314, Toxic Pollutant Effluent Standards, as required by Texas Government Code, §2001.039.

Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review the rule in the April 26, 2019, issue of the *Texas Register* (44 TexReg 2173).

The review assessed whether the initial reasons for adopting the rule continues to exist and the commission has determined that those reasons exist. The rule in Chapter 314 is required because the rule adopts by reference 40 Code of Federal Regulations, Part 129, Subpart A, Toxic Pollutant Effluent Standards and Prohibitions. The federal rule establishes effluent standards or prohibitions for certain toxic pollutants that are harmful to human health or the environment. The adoption by reference is needed to protect human health and the environment from toxic pollutant discharges and to comply with the Memorandum of Agreement between the Texas Commission on Environmental Quality and the United States Environmental Protection Agency which provides delegation of the National Pollutant Discharge Elimination System.

Public Comment

The public comment period closed on May 28, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rule in 30 TAC Chapter 314 continue to exist and readopts the section in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201903535

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 1, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 319, General Regulations Incorporated into Permits, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review the rule in the April 26, 2019, issue of the *Texas Register* (44 TexReg 2173).

The review assessed whether the initial reasons for adopting the rules continues to exist and the commission has determined that those reasons exist. The rules in Chapter 319 are required because the rules provide general requirements for wastewater discharge permits under the Texas Pollutant Discharge Elimination System and commission waste-

water permitting programs. This chapter consists of three subchapters: Subchapter A sets out monitoring and reporting requirements; Subchapter B sets maximum allowable concentrations of hazardous metals that are discharged into or adjacent to surface water in the state; and Subchapter C specifies conditions under which notification of a spill must be given to appropriate local government officials and local media, procedures for giving the required notice, content of the notice, and the method of giving notice.

Chapter 319 is necessary to verify compliance with permit effluent limitations, to ensure hazardous metal discharges are protective of human health and the environment, and to notify the public of potential hazards related to spills. However, the rule review resulted in a determination that §319.3 (relating to Prior Permit Reporting Requirements) is obsolete. This section applied to reporting procedures for permits issued prior to December 19, 1969 until reporting forms are developed by the executive director. Discharge monitoring reporting forms have been developed and are available for all permittees to report their effluent monitoring results.

Public Comment

The public comment period closed on May 28, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 319 continue to exist and readopts the chapter in accordance with the requirements of Texas Government Code, §2001.039. Repeal of the obsolete rule identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

TRD-201903537

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 1, 2019



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 TAC Chapter 328, Waste Minimization and Recycling, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the April 26, 2019, issue of the *Texas Register* (44 TexReg 2174).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in Chapter 328, Subchapters A - J are required because the rules implement requirements for the commission from the Texas Health and Safety Code (THSC). Each subchapter fulfills individual THSC requirements.

Subchapter A implements THSC, §361.119 and §361.1191, which establish rules to ensure that a solid waste processing facility is regulated as a solid waste facility and is not allowed to operate unregulated as a recycling facility. This subchapter also contains rules for the limitations on the storage of recyclable materials and reporting and record-keeping requirements for facilities regulated under this subchapter.

Subchapter B implements the requirements of THSC, §361.422, which states that the commission shall establish rules and reporting require-

ments through which progress toward achieving the established source reduction and recycling goals can be measured.

Subchapter C implements the requirements of THSC, §361.452 and §361.453, relating to lead-acid battery retailers and wholesalers and the collection of lead-acid batteries for recycling. The commission is required to produce, print, and distribute notices of battery recycling. In performing this duty, the commission may also inspect any place, building, or premises governed by THSC, §361.452 for compliance.

Subchapter D implements the requirements of THSC, §371.104, relating to the registration and management of Used Oil Filters. The commission is required to register facilities that transport, store, and process used oil filters.

Subchapter E implements the requirements of THSC, §371.023, which states that the commission shall develop a grant program for local governments and private entities that encourages the collection, reuse, and recycling of household do-it-yourselfer used oil.

Subchapter F implements the requirements of THSC, §361.112, which establishes procedures and requirements for the safe storage, transportation, utilization, and disposal of used or scrap tires or tire pieces.

Subchapter G implements the requirements of THSC, §361.430, requiring the commission to promulgate rules and regulations that establish a newsprint recycling program for the state and develop forms for and regulations governing the submission of the reports required by THSC, §361.430(g)(1).

Subchapter H implements the requirements of THSC, §369.002, which states that the commission shall maintain, for distribution, a list of the symbols required for certain plastic containers manufactured or distributed within the state and has the ability to approve the use of another nationally or internationally recognized label coding system for special-purpose plastics.

Subchapter I implements the requirements of THSC, §§361.951 - 361.966, which establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment that has reached the end of its useful life.

Subchapter J implements the requirements of THSC, §§361.971 - 361.992, which establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of television equipment.

Public Comment

The public comment period closed on May 28, 2019. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 328 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-201903536

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 1, 2019



TABLES &

GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §34.3

DESCRIPTION	1ST Violation	2nd Violation	3rd Violation
Refusing to allow an inspection of a licensed premises or interfering with an inspection of a licensed premises in violation of §§32.17(a)(2), 61.71(a)(14), 61.74(a)(7) or 101.04, Alcoholic Beverage Code.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Operating an establishment as an illegal open saloon in violation of §32.17(a)(1) or §32.01(2), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Selling wine over 17% alcohol content during prohibited hours in violation of §24.07, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Sale of alcoholic beverages while serving a suspension in violation of §§11.68, 61.71(a)(22) or 61.84, Alcoholic Beverage Code.	Original suspension plus 8-13 days \$300 per day	Original suspension plus 16-26 days \$300 per day	Cancel
Subterfuge – Permitting another person to use a license or permit other than the one it is issued to in violation of §11.05 and §109.53, Alcoholic Beverage Code.	Cancel		
Possession of distilled spirits without local distributor stamps on the container in violation of §28.15 or §32.20, Alcoholic Beverage Code.	6-8 days \$300 per day	12-16 days \$300 per day	Cancel
Possession of an empty distilled spirits container with the local distributor stamp not mutilated in violation of agency rule §41.72.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel
Possession of any uninvoiced alcoholic beverages in violation of §28.06 and §32.08, Alcoholic Beverage Code and agency rule §41.50.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Knowingly possess uninvoiced alcoholic beverages in violation of §28.06, Alcoholic Beverage Code and agency rule §41.50 or refilling distilled spirits bottles in violation of §28.08, Alcoholic Beverage Code.	Cancel		
Sale of any unauthorized alcoholic beverage in violation of §11.01, Alcoholic Beverage Code.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Possession of any unauthorized alcoholic beverage by a licensee or permittee or his employee in violation of §69.12 or §61.71(a)(9), Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel

DESCRIPTION	1ST Violation	2nd Violation	3rd Violation
Consumption of or permitting consumption of an alcoholic beverage on the premises of any off-premise license or permit in violation of §§22.10, 22.11, 26.01 or 71.01, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel
Permitting an open container on the premises of any off-premise license or permit in violation of §71.01 or §24.09, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Purchase of an alcoholic beverage from an unauthorized source in violation of §§61.71(a)(19), 61.71(a)(20), 69.09 or 71.05, Alcoholic Beverage Code.	6-8 days \$300 per day	12-16 days \$300 per day	Cancel
Sale of an alcoholic beverage by a retailer for the purpose of resale in violation of §71.05, Alcoholic Beverage Code.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Purchasing alcoholic beverages while on the "delinquent list" in violation of §102.32(d), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Selling an alcoholic beverage away from a licensed premises. §61.06	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Storage of alcoholic beverages off a licensed premises in violation of §69.10, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Making false or misleading statements in original or renewal applications or making false or misleading statements in documents submitted with or attached to applications for licenses or permits in violation of §§11.46(4), 61.71(a)(4) or 61.74(a)(11), Alcoholic Beverage Code.	Cancel		
Sale or delivery of unauthorized alcoholic beverages to a non-licensed business in violation of manufacturing and wholesaler sections of the Alcoholic Beverage Code. §§11.01, 19.01, 61.01 or 62.01	6-8 days \$300 per day	12-16 days \$300 per day	Cancel

DESCRIPTION	1ST Violation	2nd Violation	3rd Violation
<p>Sale to a permittee who is on the delinquent list, failure to timely collect credit payments, or failure to report credit law violations;</p> <p>Failure to notify the commission of a delinquent account in violation of §102.32, Alcoholic Beverage Code;</p> <p>Failure to report cash law violations or failure to sell beer for cash in violation of §102.31, Alcoholic Beverage Code.</p>	<p>3-5 days \$300 per day</p>	<p>6-10 days \$300 per day</p>	<p>18-30 days \$300 per day</p>
<p>Improper record keeping in violation of agency rules §§41.49, 41.50, 41.51, 41.52 and §§32.03, 32.06, Alcoholic Beverage Code, including invoices, membership records, pool and replacement accounts.</p>	<p>2-4 days \$300 per day</p>	<p>4-8 days \$300 per day</p>	<p>12-24 days \$300 per day</p>
<p>Knowingly filed false report, application, form, or record. §§11.61, 61.71, 62.05, 64.04, or 203.09</p>	<p>Cancel</p>		
<p>Knowingly failed to keep record or file return in manner required. §§61.71, 61.74, 62.05, 64.04, 203.09, or 206.01</p>	<p>6-12 days \$300 per day</p>	<p>12-24 days \$300 per day</p>	<p>Cancel</p>
<p>Retail cash/credit laws violation of cash or credit laws by retail licensee or permittee in violation of §§61.73, 102.31 or 102.32.</p>	<p>2-5 days \$300 per day</p>	<p>4-10 days \$300 per day</p>	<p>12-30 days \$300 per day</p>
<p><u>Exceeding the authorized amount of sales to a consumer under Alcoholic Beverage Code §§ 12.052 or 62.122.</u></p>	<p><u>Written Warning</u></p>	<p><u>3 Days</u> <u>\$500 per day</u></p>	<p><u>5 Days</u> <u>\$1,000 per day</u></p>

Figure: 19 TAC §151.1001(b)(14)

Passing Standards for Pedagogy and Professional Responsibilities Examinations

Test Code	Test Title	Total Points	Average Passing Standard (Average Raw Cut Score* or Minimum Standard)
160	Pedagogy and Professional Responsibilities EC-12 Texas Examinations of Educator Standards (TExES)	90	60
270	Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES	80	49
2003	edTPA: Secondary English-Language Arts	NA	Complete**
2004	edTPA: Secondary History/Social Studies	NA	Complete**
2005	edTPA: Secondary Mathematics	NA	Complete**
2006	edTPA: Secondary Science	NA	Complete**
2011	edTPA: Physical Education	NA	Complete**
2012	edTPA: Special Education	NA	Complete**
2015	edTPA: Visual Arts	NA	Complete**
2016	edTPA: Middle Childhood Mathematics	NA	Complete**
2017	edTPA: Middle Childhood Science	NA	Complete**
2018	edTPA: Middle Childhood English-Language Arts	NA	Complete**
2019	edTPA: Middle Childhood History/Social Studies	NA	Complete**
2020	edTPA: World Language	NA	Complete**
2021	edTPA: K-12 Performing Arts	NA	Complete**
2100	edTPA: Agricultural Education	NA	Complete**
2102	edTPA: Business Education	NA	Complete**
2104	edTPA: Classical Languages	NA	Complete**
2108	edTPA: Educational Technology Specialist	NA	Complete**
2110	edTPA: Elementary Education-Literacy with Math Test 4	NA	Complete**
2117	edTPA: Family and Consumer Sciences	NA	Complete**
2119	edTPA: Health Education	NA	Complete**
2143	edTPA: Technology and Engineering Education	NA	Complete**

*Actual raw cut scores may vary slightly from form to form. The average is based on all active forms.

**Complete is defined as a scorable portfolio, which includes receiving no more than one condition code per task.

Figure: 19 TAC §151.1001(b)(15)

Passing Standards for Content Certification Examinations

Test Code	Test Title	Max Points	Passing Standard (Minimum Proficiency Level*)
Art			
778	TX PACT: Art: Early Childhood-Grade 12	100	63 selected-response items
Computer Science and Technology Applications			
741	TX PACT: Computer Science: Grades 8-12	80	52 selected-response items
742	TX PACT: Technology Applications: Early Childhood-Grade 12	80	52 selected-response items
Core Subjects			
701	TX PACT: Essential Academic Skills (Subtest I: Reading)	35	25 selected-response items
702	TX PACT: Essential Academic Skills (Subtest II: Writing)	30 8	20 selected-response items 5 score points (1 constructed-response item)
703	TX PACT: Essential Academic Skills (Subtest III: Mathematics)	36	23 selected-response items
790	TX PACT: Core Subjects: Grades 4-8	160	94 selected-response items
Dance			
779	TX PACT: Dance: Grades 6-12	80	53 selected-response items
English Language Arts and Reading (ELAR)			
717	TX PACT: English Language Arts and Reading: Grades 4-8	100	71 selected-response items
731	TX PACT: English Language Arts and Reading: Grades 7-12	100	59 selected-response items
Health			
757	TX PACT: Health: Early Childhood-Grade 12	80	57 selected-response items
Journalism			
756	TX PACT: Journalism: Grades 7-12	72	45 selected-response items
Languages Other Than English (LOTE)			
784	TX PACT: American Sign Language (ASL): Early Childhood-Grade 12 (Subtest I)	40	22 selected-response items
785	TX PACT: American Sign Language (ASL): Early Childhood-Grade 12 (Subtest II Constructed-Response Portion)	40 32	23 selected-response items 19 score points (4 constructed-response items)
605	ACTFL: Oral Proficiency Interview – Arabic	NA	Advanced Low
600	ACTFL: Writing Proficiency Test – Arabic	NA	Advanced Low

714	TX PACT: LOTE Chinese: Early Childhood-Grade-12	80 16	58 selected-response items 11 score points (2 constructed-response items)
710	TX PACT: LOTE French: Early Childhood-Grade 12	80 16	57 selected-response items 10 score points (2 constructed-response items)
711	TX PACT: LOTE German: Early Childhood-Grade 12	80 16	59 selected-response items 11 score points (2 constructed-response items)
622	ACTFL: Oral Proficiency Interview – Hindi	NA	Advanced Low
623	ACTFL: Writing Proficiency Test – Hindi	NA	Advanced Low
624	ACTFL: Oral Proficiency Interview – Italian	NA	Advanced Low
625	ACTFL: Writing Proficiency Test – Italian	NA	Advanced Low
607	ACTFL: Oral Proficiency Interview – Japanese	NA	Intermediate High
602	ACTFL: Writing Proficiency Test – Japanese	NA	Intermediate High
630	ACTFL: Oral Proficiency Interview – Korean	NA	Advanced Low
631	ACTFL: Writing Proficiency Test – Korean	NA	Advanced Low
712	TX PACT: LOTE Latin: Early Childhood-Grade 12	50 16	31 selected-response items 11 score points (2 constructed-response items)
632	ACTFL: Oral Proficiency Interview – Portuguese	NA	Advanced Low
633	ACTFL: Writing Proficiency Test – Portuguese	NA	Advanced Low
608	ACTFL: Oral Proficiency Interview – Russian	NA	Intermediate High
603	ACTFL: Writing Proficiency Test – Russian	NA	Intermediate High
713	TX PACT: LOTE Spanish: Early Childhood-Grade 12	80 16	55 selected-response items 12 score points (2 constructed-response items)
626	ACTFL: Oral Proficiency Interview – Turkish	NA	Advanced Low
627	ACTFL: Writing Proficiency Test – Turkish	NA	Intermediate High
609	ACTFL: Oral Proficiency Interview – Vietnamese	NA	Advanced Mid
604	ACTFL: Writing Proficiency Test – Vietnamese	NA	Advanced Low
Mathematics and Science			
740	TX PACT: Chemistry: Grades 7-12	100	62 selected-response items
738	TX PACT: Life Science: Grades 7-12	100	63 selected-response items
715	TX PACT: Mathematics: Grades 4-8	100	58 selected-response items
735	TX PACT: Mathematics: Grades 7-12	100	52 selected-response items

737	TX PACT: Physical Science: Grades 6-12	100	61 selected-response items
739	TX PACT: Physics Grades 7-12	100	52 selected-response items
716	TX PACT: Science: Grades 4-8	100	62 selected-response items
736	TX PACT: Science: Grades 7-12	100	48 selected-response items
Music			
777	TX PACT: Music: Early Childhood-Grade 12	100	68 selected-response items
Physical Education			
758	TX PACT: Physical Education: Early Childhood-Grade 12	80	52 selected-response items
Social Studies			
733	TX PACT: History: Grades 7-12	100	57 selected-response items
718	TX PACT: Social Studies: Grades 4-8	100	57 selected-response items
732	TX PACT: Social Studies: Grades 7-12	100	62 selected-response items
Special Education			
701	TX PACT: Essential Academic Skills (Subtest I: Reading)	35	25 selected-response items
702	TX PACT: Essential Academic Skills (Subtest II: Writing)	30 8	20 selected-response items 5 score points (1 constructed-response item)
703	TX PACT: Essential Academic Skills (Subtest III: Mathematics)	36	23 selected-response items
Speech Communications			
729	TX PACT: Speech: Grades 7-12	64 8	40 selected-response items 5 score points (1 constructed-response item)
Theatre			
780	TX PACT: Theatre: Early Childhood-Grade 12	80	48 selected-response items
Career and Technical Education			
771	TX PACT: Technology Education: Grades 6-12	80	40 selected-response items
721	TX PACT: Family and Consumer Sciences, Composite	100	51 selected-response items
772	TX PACT: Agriculture, Food, and Natural Resources: Grades 6-12	100	52 selected-response items
776	TX PACT: Business and Finance: Grades 6-12	100	64 selected-response items

* Proficiency levels from lowest to highest are as follows: 1) Novice Low, 2) Novice Mid, 3) Novice High, 4) Intermediate Low, 5) Intermediate Mid, 6) Intermediate High, 7) Advanced Low, 8) Advanced Mid, 9) Advanced High, and 10) Superior.

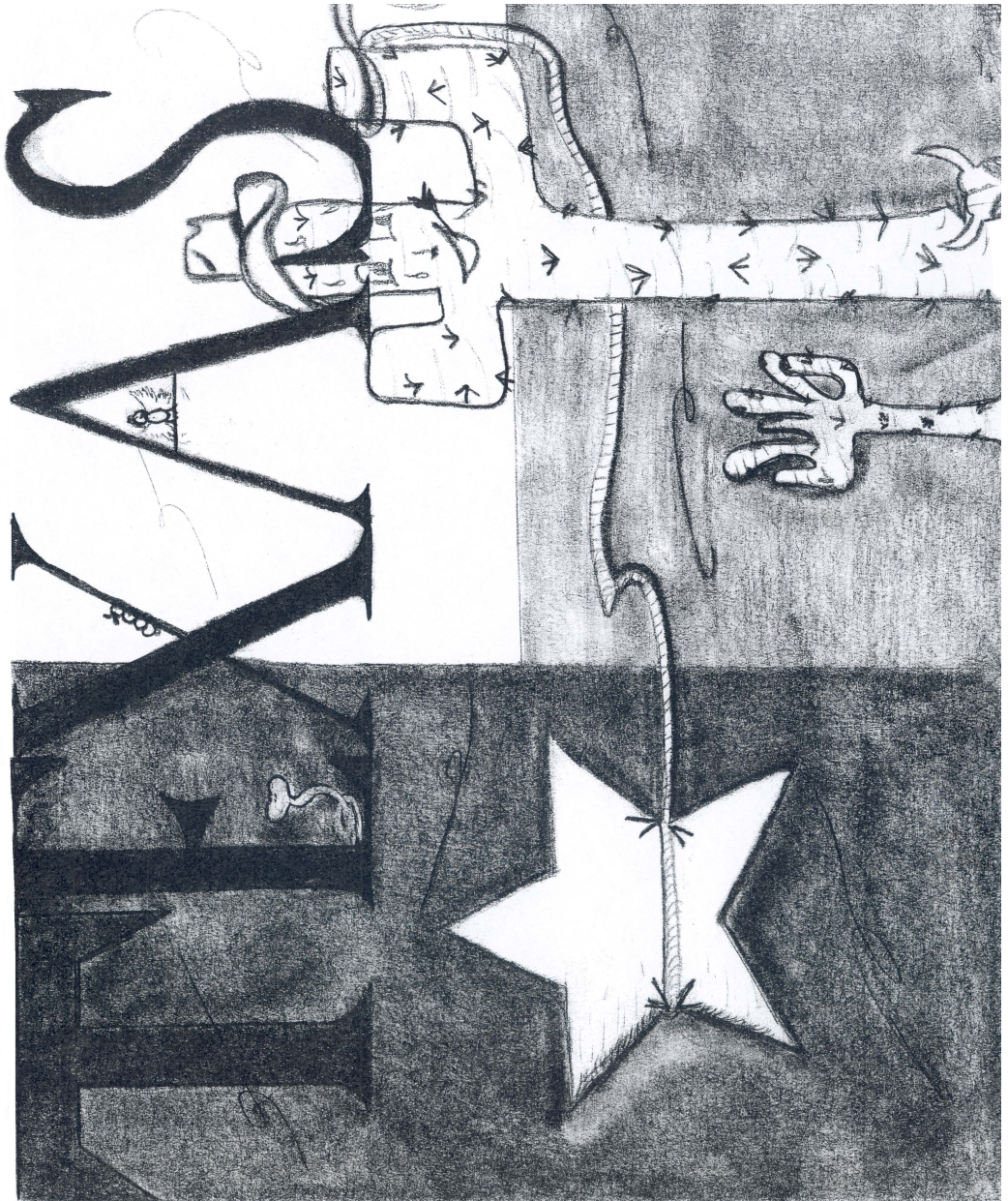
Figure: 19 TAC Chapter 228 - Preamble

Candidates participating in intensive pre-service route will need to meet the following assessment requirements for certification.

	Intern Certification	Probationary Certification	Standard Certification
Intensive Pre-Service	<ul style="list-style-type: none"> • Successful completion of intensive pre-service • Content certification examination (subject-matter knowledge) 	<ul style="list-style-type: none"> • Content pedagogy examination 	<ul style="list-style-type: none"> • Pedagogical Examination

Candidates not participating in intensive pre-service will need to meet the following assessment requirements for certification.

	Intern Certification	Probationary Certification	Standard Certification
Not in Intensive Pre-Service	<ul style="list-style-type: none"> • Content pedagogy examination 	<ul style="list-style-type: none"> • Pedagogical Examination 	



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

Certification of the Average Closing Price of Gas and Oil - August 2019

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period August 2019 is \$42.89 per barrel for the three-month period beginning on May 1, 2019, and ending July 31, 2019. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of August 2019, from a qualified low-producing oil lease, is not eligible for a credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period August 2019 is \$1.44 per mcf for the three-month period beginning on May 1, 2019, and ending July 31, 2019. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of August 2019, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of August 2019 is \$54.84 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of August 2019, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of August 2019 is \$2.17 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of August 2019, from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

TRD-201903526

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Filed: September 30, 2019

Correction of Error

The Comptroller of Public Accounts proposed amendments to 34 TAC §3.586 in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5605). Due to an error by the Texas Register, the text of sub-

section (i) was published incorrectly. The correct text for the subsection is as follows:

(i) [(e)] Public Law 86-272. Public Law 86-272 (15 United States Code §§381 - 384) does not apply to the Texas franchise tax.

TRD-201903504

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, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/07/19 - 10/13/19 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 10/07/19 - 10/13/19 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 10/01/19 - 10/31/19 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 10/01/19 - 10/31/19 is 18% for Commercial over \$250,000.

¹ Credit for personal, family, or household use.

² Credit for business, commercial, investment or other similar purpose.

³ For variable rate commercial transactions only.

TRD-201903532

Leslie Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 1, 2019

Texas Education Agency

Correction of Error Relating to Proposed Amendment to 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 2, Participation and Assessment Requirements for Graduation, §101.3022, Assessment Requirements for Graduation

The Texas Education Agency (TEA) filed proposed amendment to 19 TAC §101.3022 on July 12, 2019, for publication in the July 26, 2019 issue of the *Texas Register* (44 TexReg 3755).

Due to error by the TEA, the Statutory Authority and Cross Reference to Statute sections of the proposal reflected incorrect statutory citations. The correct statutory citations are as follows.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §28.0258, as amended by Senate Bill (SB) 213,

86th Texas Legislature, 2019, which extends the expiration date for an individual graduation committee to determine if a student who has failed to comply with the end-of-course (EOC) assessment instrument performance requirements in the TEC, §39.025, is qualified to graduate. The expiration date changed from September 1, 2019, to September 1, 2023. Subsection (k) requires the commissioner to adopt rules to implement the section; TEC, §39.023(c), which requires the agency to adopt EOC assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history; and TEC, §39.025(a-2), as amended by SB 213, 86th Texas Legislature, 2019, which extends the expiration date to allow a student who has failed to perform satisfactorily on EOC assessment instruments to receive a high school diploma if the student qualifies for graduation under the TEC, §28.0258. The expiration date changed from September 1, 2019, to September 1, 2023. SB 213 also redesignates subsection (a-2) as subsection (a-5).

CROSS REFERENCE TO STATUTE. Texas Education Code, §§28.0258, as amended by Senate Bill (SB) 213, 86th Texas Legislature, 2019; 39.023(c); and 39.025(a-2), as amended by SB 213, 86th Texas Legislature, 2019.

TRD-201903477

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: September 25, 2019



Request for Applications Concerning the 2020-2022 Pathways in Technology Early College High Schools (P-TECH) and Industry Cluster Innovative Academies (ICIA) Planning and Implementation Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-20-106 is authorized by General Appropriations Act, Article III, Rider 66, 86th Texas Legislature, 2019.

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-20-106- from eligible applicants, which include local educational agencies (LEAs) that serve students in Grades 9-12 or will begin serving students in Grade 9 or students in Grades 9 and 10 in the first year of implementation (2021-2022) and will progressively scale up by adding at least one grade level per year. Recipients of the 2018-2019 or 2019-2020 P-TECH and ICIA Planning Grant or the 2018-2020 or 2019-2021 P-TECH and ICIA Success Grant are not eligible for the 2020-2022 P-TECH and ICIA Planning and Implementation Grant.

Description. The 2020-2022 P-TECH and ICIA Planning and Implementation Grant will provide selected applicants funds to engage in 29 months (March 1, 2020 to July 8, 2022) of planning and implementation, with support from the TEA-selected technical assistance provider, to establish the foundational components of the P-TECH and ICIA, as outlined in TEC, §§29.551-29.556 (P-TECH), and TEC, §29.908 (ICIA). Grantees that receive the 2020-2022 P-TECH and ICIA Planning and Implementation Grant will use the first 18 months (March 2020 to August 2021) for planning to implement the design elements and requirements aligned to the P-TECH and ICIA Blueprint. P-TECH and ICIA models allow students the opportunity to earn a high school diploma while simultaneously earning industry certifications, level 1 or level 2 certificates, and/or an associate degree on or before the sixth anniversary of a student's first day of high school at no cost to the student. P-TECH and ICIA campuses establish strong partnership agreements with local business and industry as well as institutions of higher education (IHEs). The partners serve on the leadership and advisory

team to provide support and guidance to the P-TECH and ICIA in resource acquisition, curriculum development, work-based learning, and student/community outreach to ensure a successful academic and career pipeline. In partnership with an IHE as well as community employers, a P-TECH or ICIA campus provides rigorous academic and work-based learning programs that provide students with clear pathways to regional employment opportunities in response to local workforce needs. P-TECH and ICIA schools are public schools established under TEC, §29.553 (P-TECH), and TEC, §29.908 (ICIA), that enable students in Grade 9, 10, 11, or 12 who are at risk of dropping out, as defined by TEC, §29.081, or who wish to accelerate completion of high school to combine high school courses and college-level courses. Grantees are required to begin serving students in the P-TECH and ICIA school beginning in the 2021-2022 school year and to meet design elements and outcome-based measures detailed in the P-TECH and ICIA Blueprint. Grantees are also required to apply for P-TECH and ICIA designation in the 2020-2021 school year when the designation application window opens to begin serving students in the 2021-2022 school year, as required by this grant.

Dates of Project. The 2020-2022 P-TECH and ICIA Planning and Implementation Grant will be implemented during the 2019-2020 school year through the 2021-2022 school year. Applicants should plan for a starting date of no earlier than March 1, 2020, and an ending date of no later than July 8, 2022.

Project Amount. Approximately \$2.35 million is available for funding the 2020-2022 P-TECH and ICIA Planning and Implementation Grant. It is anticipated that approximately 11 grants will be awarded ranging in amounts up to \$200,000. This project is funded 85% with state funds and 15% 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 PTECH@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than Friday, November 1, 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 Friday, November 8, 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), Tuesday, December 10, 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.

Issued in Austin, Texas, on October 2, 2019.

TRD-201903574

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: October 2, 2019



Request for Training Programs on Seizure Recognition and Related First Aid Training in Public Schools

Description. Texas Education Agency (TEA) is publishing notification that training programs on seizure recognition and related first aid may be submitted for review. The purpose of the review process is to assist school districts in meeting requirements of Texas Education Code (TEC), §38.033, as added by House Bill (HB) 684, 86th Texas Legislature, 2019. New TEC, §38.033, permits TEA to approve an online course of instruction for seizure recognition and related first aid provided by a nonprofit national foundation that supports the welfare of individuals with epilepsy and seizure disorders. School nurses employed by a school district and school district employees whose duties at school include regular contact with students are required to complete the online course of instruction.

Program Requirements. Any entity that elects to have a training program for seizure recognition and related first aid reviewed is invited to send the complete program to TEA for consideration. Eligible programs must be provided by a nonprofit national foundation that supports the welfare of individuals with epilepsy and seizure disorders, be offered online, and be free of charge.

Selection Criteria. Selection of qualified training programs on seizure recognition and related first aid training will be based on the following criteria.

- (1) The training course must offer instruction for school nurses regarding the management of students with seizure disorders.
- (2) The training course must offer instruction for school personnel regarding awareness of students with seizure disorders.
- (3) The training course must include information and instruction regarding seizure recognition and related first aid.
- (4) The training program must be provided by a nonprofit national foundation that supports the welfare of individuals with epilepsy and seizure disorders.
- (5) The training program must be offered online.
- (6) The training program provided by the nonprofit entity must be free of charge.

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 received either in hard copy or electronic format by 5:00 p.m. (Central Time), Monday, November 4, 2019, to be considered for the list of Approved Training Programs on Seizure Recognition and Related First Aid Training. Materials may be submitted by mail to Texas Education Agency, Curriculum Standards and Student Support Division, 1701 North Congress Avenue, Austin, Texas 78701 or electronically to HealthandSafety@tea.texas.gov. Materials will be reviewed as they are submitted, and TEA will post approved programs to the list of Approved Training Programs on Seizure Recognition and Related First Aid Training. No materials will be returned to submitting entities. Materials will be kept as a reference for staff at TEA.

Issued in Austin, Texas, on October 2, 2019.

TRD-201903572

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: October 2, 2019



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 12, 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 **November 12, 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: Alex Mendez dba Mendez Tire Shop 3; DOCKET NUMBER: 2017-1582-MSW-E; IDENTIFIER: RN105107197; LOCATION: Weslaco, Hidalgo County; TYPE OF FACILITY: tire shop; RULES VIOLATED: 30 TAC §330.15(a) and (c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; PENALTY: \$19,500; ENFORCEMENT COORDINA-

TOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: ANDERSON COLUMBIA CO., INCORPORATED; DOCKET NUMBER: 2019-1060-EAQ-E; IDENTIFIER: RN108909615; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: commercial project site; RULE VIOLATED: 30 TAC §213.4(j)(6), by failing to obtain approval of a modification of an approved Edwards Aquifer Protection Plan prior to initiating a regulated activity over the Edwards Aquifer Transition Zone; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: City of Georgetown; DOCKET NUMBER: 2019-0501-MWD-E; IDENTIFIER: RN101608701; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010489005, Interim I Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$4,762; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(4) COMPANY: City of Groesbeck; DOCKET NUMBER: 2019-0980-MWD-E; IDENTIFIER: RN101918944; LOCATION: Groesbeck, Limestone 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 WQ0010182001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$3,938; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Port Arthur; DOCKET NUMBER: 2019-0375-MSW-E; IDENTIFIER: RN100225390; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: Type I landfill; RULES VIOLATED: 30 TAC §330.121(a) and §330.133(a) and Municipal Solid Waste (MSW) Permit Number 1815A, Site Operating Plan (SOP), Section 4.2 Unloading Wastes, by failing to unload solid waste into as small an area as practical as specified in the SOP; 30 TAC §330.129 and MSW Permit Number 1815A, SOP, Section 6.1 Fire Prevention Procedures, by failing to maintain a source of earthen material in such a manner that it is available at all times to extinguish any fires; 30 TAC §330.139(1) and (2) and MSW Permit Number 1815A, SOP, Section 4.5 Control of Windblown Wastes and Litter, by failing to control windblown waste and litter at the active working face; 30 TAC §330.143 and MSW Permit Number 1815A, SOP, Section 4.7 Landfill Markers and Benchmark, by failing to install and maintain required landfill markers and a permanent benchmark; 30 TAC §330.153 and MSW Permit Number 1815A, SOP, Section 4.11 Maintenance of Site Access Roads, by failing to maintain all-weather access roads and other access roadways in a clean and safe condition; 30 TAC §330.165(a), (c), and (d) and MSW Permit Number 1815A, SOP, Sections 4.17.2 Daily Cover and 4.17.3 Intermediate Cover, by failing to provide adequate landfill cover; 30 TAC §330.165(g) and MSW Permit Number 1815A, SOP, Section 4.17.5 Erosion of Cover, by failing to repair erosion of intermediate cover within five days of detection; and 30 TAC §330.167 and MSW Permit Number 1815A, SOP, Section 4.18 Pondered Water, by failing to prevent the ponding of water at the facility; PENALTY: \$56,962; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$45,570; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512)

239-2607; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Winona; DOCKET NUMBER: 2019-0485-PWS-E; IDENTIFIER: RN101387983; LOCATION: Winona, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the executive director (ED) for the January 1, 2018 - June 30, 2018, monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification was distributed in a manner consistent with TCEQ requirements for the July 1, 2016 - December 31, 2016, and July 1, 2017 - December 31, 2017, monitoring periods; 30 TAC §290.122(c)(2)(A) and (f), by failing to timely provide public notification and submit a copy of the public notification to the ED, accompanied with a signed Certificate of Delivery, regarding the failure to collect lead and copper tap samples for the January 1, 2016 - June 30, 2016, and January 1, 2017 - June 30, 2017, monitoring periods, failing to submit a Disinfectant Level Quarterly Operating Report for the fourth quarter of 2015 and fourth quarter of 2016, failing to submit the results of nitrate, nitrite, and volatile organic chemical contaminants sampling for the January 1, 2014 - December 31, 2014, monitoring period, and failing to collect metals, minerals, cyanide, synthetic organic chemical contaminants (Methods 504, 515, and 531, and Group 5), and radionuclides samples for the January 1, 2014 - December 31, 2014, monitoring period; PENALTY: \$905; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Edward A. Hetzel dba Decent Store; DOCKET NUMBER: 2019-0640-PWS-E; IDENTIFIER: RN102250669; LOCATION: Vidor, Orange County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance for the system's facilities and equipment; and 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: \$660; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: HEART O' TEXAS COUNCIL OF THE BOY SCOUTS OF AMERICA dba Longhorn Council, Boy Scouts of America; DOCKET NUMBER: 2019-0517-PWS-E; IDENTIFIER: RN101229219; LOCATION: Hurst, Palo Pinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.41(c)(1)(F) and TCEQ Agreed Order Docket Number 2015-0297-PWS-E, Ordering Provision Number 2.e.ii, by failing to obtain sanitary control easements that cover the land within 150 feet of the facility's two wells; 30 TAC §290.41(c)(3)(J), by failing to provide Well Number 1 with a concrete sealing block that extends a minimum of three feet from the exterior well casing in all directions with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot; 30 TAC §290.41(c)(3)(K), by failing

to seal the wellhead by a gasket or sealing compound and provide a well casing vent for Well Number 2 that is covered with 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(e)(3), by failing to install disinfection equipment so that continuous and effective disinfection can be secured under all conditions; 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; 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 60; 30 TAC §290.43(c)(2), by failing to ensure that the facility's ground storage tank float gauge hatch remains locked except during inspections and maintenance; 30 TAC §290.45(d)(2)(B)(iv) and THSC, §341.0315(c) and TCEQ Agreed Order Docket Number 2015-0297-PWS-E, Ordering Provision Number 2.j.i, by failing to provide at least two service pumps with a total capacity of three times the maximum daily demand; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), (ii)(III), and (iv) and (B)(iii) and TCEQ Agreed Order Docket Number 2015-0297-PWS-E, Ordering Provision Number 2.a.ii, by failing to maintain water works operation and maintenance records and make them readily available for review by commission personnel upon request; 30 TAC §290.46(m) and TCEQ Agreed Order Docket Number 2015-0297-PWS-E, Ordering Provision Number 2.a.iii, by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(n)(3) and TCEQ Agreed Order Docket Number 2015-0297-PWS-E, Ordering Provision Number 2.e.iii, by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; 30 TAC §290.46(s)(2)(C)(i) and TCEQ Agreed Order Docket Number 2015-0297-PWS-E, Ordering Provision Number 2.a.v, by failing to verify the accuracy of the manual disinfectant residual analyzers at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.46(u) and TCEQ Agreed Order Docket Number 2015-0297-PWS-E, Ordering Provision Number 2.h, by failing to plug and seal abandoned public water supply wells in accordance with 16 TAC Chapter 76 or submit the test results proving that the wells are in a non-deteriorated condition; 30 TAC §290.46(v), by failing to ensure that all electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.46(z), by failing to develop a nitrification action plan for a system distributing chloraminated water; 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; and 30 TAC §290.121(a) and (b) and TCEQ Agreed Order Docket Number 2015-0297-PWS-E, Ordering Provision Number 2.c.iv, by failing to maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; PENALTY: \$23,610; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: HERITAGE MARKET LLC dba Route 69 Country Store; DOCKET NUMBER: 2019-0721-PST-E; IDENTIFIER: RN102437779; LOCATION: Warren, Tyler County; TYPE OF

FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$1,876; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: KMBR Management, Inc dba Stop-N-Shop; DOCKET NUMBER: 2019-0734-PST-E; IDENTIFIER: RN102457561; LOCATION: Bishop, Nueces County; TYPE OF FACILITY: retail convenience facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,623; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(11) COMPANY: Liberty Tire Recycling, LLC; DOCKET NUMBER: 2018-1461-IHW-E; IDENTIFIER: RN105851703; LOCATION: Houston, Harris County; TYPE OF FACILITY: land reclamation project using tires; RULE VIOLATED: 30 TAC §335.2(b), by failing to not cause, suffer, allow, or permit the disposal of industrial solid waste at an authorized facility; PENALTY: \$36,307; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Millersview-Doole Water Supply Corporation; DOCKET NUMBER: 2019-0707-PWS-E; IDENTIFIER: RN101457786; LOCATION: Millersview, Concho County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A), by failing to obtain approval of the executive director prior to instituting significant changes in existing systems or supplies; 30 TAC §290.42(f)(1)(E)(ii)(II), by failing to provide adequate containment facilities for all liquid chemical storage tanks; and 30 TAC §290.46(e)(6)(B) and Texas Health and Safety Code, §341.033(a), by failing to use at least two operators for surface water systems that serve more than 1,000 connections; one holding a Class B or higher surface water license and the other holding a Class C or higher surface water license, who each work at least 32 hours per month at the public water system's production, treatment, or distribution facilities; PENALTY: \$555; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(13) COMPANY: RSN INVESTMENTS INC dba Town & Country RV Food Mart; DOCKET NUMBER: 2019-0281-PST-E; IDENTIFIER: RN102384930; LOCATION: College Station, Brazos County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (3), by failing to provide an amended registration for any change or additional information regarding the underground storage tank (UST) system within 30 days of the occurrence of the change or addition; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting a delivery of regulated substance into the USTs; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the

fill tube according to the UST registration and self-certification form; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps including dispenser sumps, manways, overflow containers or catchment basins associated with the USTs at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; 30 TAC §334.48(c) and §334.50(d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c)(1), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel, failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tanks each operating day; and 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and system components are operating properly; PENALTY: \$12,703; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: RYAN BUSINESS, INCORPORATED dba Dessau Mini Mart; DOCKET NUMBER: 2019-0947-PST-E; IDENTIFIER: RN101434280; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(15) COMPANY: S. A. Thompson Marketing, Incorporated dba Corner Store; DOCKET NUMBER: 2019-1041-PST-E; IDENTIFIER: RN106684830; LOCATION: Jacksonville, Cherokee County; TYPE OF FACILITY: retail convenience facility; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$2,620; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Sumiden Wire Products Corporation; DOCKET NUMBER: 2019-0710-WQ-E; IDENTIFIER: RN109186320; LOCATION: Dayton, Liberty County; TYPE OF FACILITY: industrial steel product manufacturing facility; RULES VIOLATED: 30 TAC §315.1 and 40 Code of Federal Regulations (CFR) §403.5(a)(1), by failing to prevent the introduction into a publicly owned treatment works (POTW) any pollutants which cause pass through or interference; and 30 TAC §315.1 and 40 CFR §403.6(a)(1), by failing to request written certification of categorical determination prior to commencing the discharge of treated process wastewater to a POTW; PENALTY: \$5,626; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Swifty Mart, LLC dba Tommys 29; DOCKET NUMBER: 2019-0787-PST-E; IDENTIFIER: RN102241320; LOCATION: North Richland Hills, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557;

REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2019-0358-AIR-E; IDENTIFIER: RN100238716; LOCATION: Chico, Wise County; TYPE OF FACILITY: oil and natural gas processing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 84108, General Conditions Number 8 and Special Conditions Number 1, Federal Operating Permit Number O3181, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$6,563; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: United Electronic Recycling, LLC; DOCKET NUMBER: 2019-1046-MSW-E; IDENTIFIER: RN110756327; LOCATION: Coppell, Dallas County; TYPE OF FACILITY: electronic recycling facility; RULE VIOLATED: 30 TAC §328.5(b), by failing to submit a Notice of Intent prior to the commencement of recycling activities; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: WTG Jameson, LP; DOCKET NUMBER: 2019-0871-AIR-E; IDENTIFIER: RN101246478; LOCATION: Silver, Coke County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §106.512(2)(C)(ii) and §122.143(4), Permit by Rule Registration Numbers 52490 and 52491, Federal Operating Permit Number O865, General Terms and Conditions and Special Terms and Conditions Number 10, and Texas Health and Safety Code, §382.085(b), by failing to test an engine for emissions of nitrogen oxides and carbon monoxide within seven days following engine maintenance which may reasonably be expected to increase emissions; PENALTY: \$5,145; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201903529

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 1, 2019



Enforcement Orders

A default order was adopted regarding MAUKA WATER, LTD., Docket No. 2017-1658-PWS-E on September 27, 2019, assessing \$17,544 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.

A default and shutdown order was adopted regarding Bombay Trading, LLC dba Texan Stop 1, Docket No. 2018-0208-PST-E on September 27, 2019, assessing \$4,624 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.

A default order was adopted regarding Rene Perez dba Factory Garage Collision and Repair, Docket No. 2018-0296-AIR-E on September 27, 2019, assessing \$3,937 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton

Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding F & L Auto Body, LLC, Docket No. 2018-0324-AIR-E on September 27, 2019, assessing \$1,312 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Benjamin Warms, 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 KMTEX, LLC, Docket No. 2018-0388-AIR-E on September 27, 2019, assessing \$35,001 in administrative penalties with \$7,100 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding K & Z Enterprises, LLC dba Quickway Food Store 1, Docket No. 2018-0660-PST-E on September 27, 2019, assessing \$11,681 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.

A default order was adopted regarding Karen Harwell dba Hallelujah Hill MHP, Docket No. 2018-0734-PWS-E on September 27, 2019, assessing \$1,181 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ONEOK Hydrocarbon, L.P., Docket No. 2018-0849-AIR-E on September 27, 2019, assessing \$32,625 in administrative penalties with \$6,525 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HAIDER & SONS ENTERPRISES INC. dba Swift-T, Docket No. 2018-0895-PST-E on September 27, 2019, assessing \$15,000 in administrative penalties with \$8,925 deferred. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TPC Group LLC, Docket No. 2018-0957-AIR-E on September 27, 2019, assessing \$19,575 in administrative penalties with \$3,915 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KASHISH CORPORATION dba Dairy Mart 7, Docket No. 2018-0990-PST-E on September 27, 2019, assessing \$13,526 in administrative penalties with \$2,705 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Rockdale, Docket No. 2018-1013-MWD-E on September 27, 2019, assessing \$39,250 in administrative penalties. 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 JEREMY & WILL, INC., Docket No. 2018-1015-WQ-E on September 27, 2019, assessing \$23,658 in administrative penalties with \$4,731 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PERMANN, INC. dba Tanglewood Service Center, Docket No. 2018-1054-PST-E on September 27, 2019, assessing \$23,650 in administrative penalties with \$4,730 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding INEOS Styrolution America LLC, Docket No. 2018-1138-AIR-E on September 27, 2019, assessing \$9,000 in administrative penalties with \$1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Strip Property Land and Water, LLC, Docket No. 2018-1154-PWS-E on September 27, 2019, assessing \$694 in administrative penalties with \$504 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Quik-Way Operating, LLC dba Day & Night 82, Docket No. 2018-1333-PST-E on September 27, 2019, assessing \$33,750 in administrative penalties with \$6,750 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TA Operating LLC dba Denton Travel Center, Docket No. 2018-1407-PST-E on September 27, 2019, assessing \$10,313 in administrative penalties with \$2,062 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding C.V.W.S., Inc., Docket No. 2018-1492-PWS-E on September 27, 2019, assessing \$296 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.

A default order was adopted regarding Lee Exceptional Investments, LLC dba Exceptional Landscapes, Docket No. 2018-1521-AIR-E on September 27, 2019, assessing \$1,696 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Logan Harrell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201903480
Bridget C. Bohac
Chief Clerk

Texas Commission on Environmental Quality
Filed: September 27, 2019

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Enforcement Orders

An agreed order was adopted regarding Eagle Mountain Real Estate Investments, Inc., Docket No. 2017-0431-PWS-E on October 1, 2019, assessing \$550 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 CANYON RIDGE INVESTMENT COMPANY, Docket No. 2017-1105-PWS-E on October 1, 2019, assessing \$838 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 DAKOTA RESOURCES, INC., Docket No. 2018-1186-WR-E on October 1, 2019, assessing \$2,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ECS Big Town, LLC, Docket No. 2018-1486-MLM-E on October 1, 2019, assessing \$5,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201903571

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 2, 2019

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Notice and Comment Hearing: Draft Permit No. O1493

This is a notice for a notice and comment hearing on Federal Operating Permit Number O1493. During the notice and comment hearing, informal questions on the Federal Operating Permit will be answered and formal comments will be received. The Texas Commission on Environmental Quality (TCEQ) has scheduled the notice and comment hearing regarding this application and draft permit as follows:

Thursday, November 14, 2019 at 7:00 p.m.

Carl A. Parker Multipurpose Center

At Lamar State College-Port Arthur

1800 Lakeshore Drive

Port Arthur, Texas 77640

Application and Draft Permit. Oxbow Calcining LLC, P.O. Box C, Port Arthur, TX 77641-0178, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Federal Operating Permit (herein referred to as Permit) No. O1493, Application No. 27376, to authorize operation of the Port Arthur Plant, a Calcined Petroleum Coke facility. The area addressed by the application is located at 3901 Coke Dock Road in Port Arthur, Jefferson County, Texas 77640. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to the application. You can find an electronic map of the facility at: <https://tceq.maps.ar->

cgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-93.95611%2C29.84333&level=12.

The purpose of a federal operating permit is to improve overall compliance with the rules governing air pollution control by clearly listing all applicable requirements, as defined in Title 30 Texas Administrative Code §122.10 (30 TAC §122.10). The draft permit, if approved, will codify the conditions under which the area must operate. The permit will not authorize new construction. The executive director has completed the technical review of the application and has made a preliminary decision to prepare a draft permit for public comment and review. The executive director recommends issuance of this draft permit. The permit application, statement of basis, and draft permit will be available for viewing and copying at the TCEQ Central Office, 12100 Park 35 Circle, Building E, First Floor, Austin, Texas 78753; the TCEQ Beaumont Regional Office, 3870 Eastex Fwy., Beaumont, Texas 77703-1830; and the Port Arthur Public Library, 4615 9th Ave, Port Arthur, Texas 77642-5818, beginning the first day of publication of this notice. The draft permit and statement of basis are available at the TCEQ Website:

www.tceq.texas.gov/goto/tvnotice

At the TCEQ central and regional offices, relevant supporting materials for the draft permit, as well as the New Source Review permits which have been incorporated by reference, may be reviewed and copied. Any person with difficulties obtaining these materials due to travel constraints may contact the TCEQ central office file room at (512) 239-2900.

Notice and Comment Hearing. A public hearing will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public hearing is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. The purpose of this hearing will be to receive formal public comment which the TCEQ will consider in determining whether to revise and/or issue the permit and in determining the accuracy and completeness of the permit. Any person may attend this hearing and submit written or oral comments. The hearing will be conducted in accordance with the Texas Clean Air Act §382.0561, as codified in the Texas Health and Safety Code, and 30 TAC §122.340.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Any person may also submit written comments before the hearing to the Texas Commission on Environmental Quality, Office of Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at <http://www14.tceq.texas.gov/epic/eComment/>. Written comments should include (1) your name, address, and daytime telephone number, and (2) the draft permit number found at the top of this notice.

A notice of proposed final action that includes a response to comments and identification of any changes to the draft permit will be mailed to everyone who submitted public comments, a hearing request, or requested to be on the mailing list for this application. This mailing will also provide instructions for public petitions to the U.S. Environmental Protection Agency (EPA) to request that the EPA object to the issuance of the proposed permit. After receiving a petition, the EPA may only object to the issuance of a permit which is not in compliance with the applicable requirements or the requirements of 30 TAC Chapter 122.

Mailing List. In addition to submitting public comments, a person may ask to be placed on a mailing list for this application by sending a request to the Office of the Chief Clerk at the address above. Those on the mailing list will receive copies of future public notices (if any) mailed by the Chief Clerk for this application.

Information. For additional information about this permit application or the permitting process, please contact the Texas Commission on Environmental Quality, Public Education Program, MC-108, P.O. Box 13087, Austin, Texas 78711-3087 or toll free at (800) 687-4040. Si desea información en Español, puede llamar al (800) 687-4040.

Further information may also be obtained for Oxbow Calcining LLC by calling Mr. Kyle Bryant at (409) 983-8467.

Notice Issuance Date: September 27, 2019

TRD-201903561

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 2, 2019



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 157931

APPLICATION. Five Star Concrete, Inc., 2 Grist Mill Road, Umland, Texas 78640-9363 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 157931 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 2492 County Road 130, Hutto, Williamson County, Texas 78634. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.598264&lng=-97.555709&zoom=13&type=r>. This application was submitted to the TCEQ on August 6, 2019. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on September 6, 2019.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any

contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Monday, October 28, 2019, at 6:00 p.m.

Hampton Inn & Suites Hutto

327 Ed Schmidt Boulevard

Hutto, Texas 78634

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Austin Regional Office, located at 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753-1808, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Five Star Concrete, Inc., 2 Grist Mill Road, Umland, Texas 78640-9363, or by calling Mr. Stephen Hampton, Compliance Manager at (512) 398-7797.

Notice Issuance Date: September 24, 2019

TRD-201903558

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 2, 2019



Notice of District Petition

Notice issued September 26, 2019

TCEQ Internal Control No. D-06102019-017; Cressman Enterprises GP, LLC, a Texas limited liability company, General Partner of Cress-

man Enterprises, LP, a Texas limited partnership, Kathryn A. Cressman, and the Estate of Marvin R. Cressman AKA Marvin Richard Cressman, Deceased (Petitioners) filed a petition for creation of Round Rock Municipal Utility District No. 2 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) there are no lienholders on the land in the proposed District; (3) the proposed District will contain approximately 174.21 acres located within Williamson County, Texas; and (4) the proposed District is entirely within the corporate limits of the City of Round Rock, Texas and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. R-2019-0210, passed and approved May 9, 2019, the City of Round Rock gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the general nature of the work proposed to be done by the District, as contemplated at the present time, is the design, construction, acquisition, improvement, extension, financing, and issuance of bonds: (i) for maintenance, operation, and conveyance, of an adequate and efficient waterworks and sanitary sewer system for domestic purposes; (ii) for maintenance, operation, and conveyance of works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate, and amend local storm waters or other harmful excesses of waters; (iii) for, maintenance, operation, and conveyance of park and recreational facilities; (iv) for conveyance of roads and improvements in aid of roads; and (v) for maintenance, operation, and conveyance of such other additional facilities, systems, plants, and enterprises as may be consistent with any or all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately \$19,089,823, of which approximately \$14,100,000 (including \$6,620,000 for water, wastewater, and drainage plus \$1,220,000 for recreation plus \$6,260,000 for roads) is anticipated to be financed by the issuance of bonds.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and

will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201903556

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 2, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Anthony "Tony" Aguilar and Benita Castillo Villasenor: SOAH Docket No. 582-20-0332; TCEQ Docket No. 2018-1695-IHW-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. - October 31, 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 June 21, 2019 concerning assessing administrative penalties against and requiring certain actions of Anthony "Tony" Aguilar and Benita Castillo Villasenor, for violations in El Paso County, Texas, of: 30 Texas Administrative Code §335.4 and TCEQ Agreed Order Docket No. 2011-1833-IHW-E, Ordering Provisions Nos. 2.a. through 2.d.

The hearing will allow Anthony "Tony" Aguilar and Benita Castillo Villasenor, 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 Anthony "Tony" Aguilar and Benita Castillo Villasenor, 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 Anthony "Tony" Aguilar and Benita Castillo Villasenor 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.** Anthony "Tony" Aguilar and Benita Castillo Villasenor, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054, Texas Water Code ch. 7, Texas Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 335; 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 Audrey Liter, 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: October 1, 2019

TRD-201903562

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 2, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Lewis Eugene Roland: SOAH Docket No. 582-20-0302; TCEQ Docket No. 2018-1391-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. - October 31, 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 First Amended Report and Petition mailed June 18, 2019 concerning assessing administrative penalties against and requiring certain actions of Lewis Eugene Roland, for violations in Travis County, Texas, of: 30 Texas Administrative Code §330.15(a) and (c).

The hearing will allow Lewis Eugene Roland, 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 Lewis Eugene Roland, 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 Lewis Eugene Roland 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 First Amended Report and Petition, attached hereto and incorporated herein for all purposes.** Lewis Eugene Roland, 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 ch. 7 and §7.054, Tex. Health & Safety Code ch. 361, and 30 Texas Administrative Code chs. 70 and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Adam Taylor, 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: October 1, 2019

TRD-201903563

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 2, 2019



Notice of Public Meeting for an Air Quality Permit: Permit Number 18897

APPLICATION. Western Refining Company, L.P., 212 North Clark Drive, El Paso, Texas 79905-3106, has applied to the Texas Commission on Environmental Quality (TCEQ) for two separate amendments to Air Quality Permit Number 18897, which would authorize modification to the Marathon El Paso Refinery North located at 6501 Trowbridge Drive, El Paso, El Paso County, Texas 79905. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to either application. <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-106.395277%2C31.7675&level=12>.

The first application was submitted to the TCEQ on May 2, 2018. The existing facility will emit the following contaminants: carbon monoxide, hydrogen cyanide, hydrogen sulfide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide. The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

The second application was submitted to the TCEQ on May 1, 2019. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. The amendment will authorize an increase in emissions of the following air contaminants: carbon monoxide, hazardous air pollutants, and organic compounds. The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments on either application to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing final decisions on the applications. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit applications. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit applications. A written response to all formal comments for both applications will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address.

The Public Meeting is to be held:

Tuesday, October 22, 2019 at 7:00 p.m.

Riverside High School Cafeteria

301 Midway Drive

El Paso, Texas 79915

Please note that Western Refining Company, L.P. has applied to the TCEQ for two separate amendments to Air Quality Permit Number 18897 and this public meeting will address both pending applications.

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

Both permit applications, executive director's preliminary decisions, and the draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ El Paso regional office, and at the Clardy Fox Library, 5515 Robert Alva Avenue, El Paso, El Paso County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ El Paso Regional Office, 401 East Franklin Avenue Suite 560, El Paso, Texas. Further information may also be obtained from Western Refining Company, L.P. at the address stated above or by calling Mr. Kevin Adams, Environmental Supervisor, at (915) 775-7864.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: September 26, 2019

TRD-201903559

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 2, 2019



Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit: Proposed Permit No. 2405

Application. JSI Houston Transfer Station, P.O. Box 1149, Splendora, Montgomery County, Texas 77372, a municipal solid waste transfer station, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to authorize an increase in the allowed waste acceptance rate. The R&J Transfer Station is located at 11028 Cordoba Dr., Houston, Texas 77088 in Harris County, Texas. The TCEQ received this application on August 19, 2019. The permit application is available for viewing and copying at the Shepard-Acres Homes Neighborhood Library, 8501 W. Montgomery, Houston, Texas 77088, and may be viewed online at <http://downloads.cecinc.com/R&JTransferStation/>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bb-ddd360f8168250f&marker=-95.448055%2C29.894166&level=12>. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the

mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement 'I/we request a contested case hearing.' If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at

www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from JSI Houston Transfer Station at the address stated above or by calling Mr. Adam W. Mehevec, P.E., Principal, Civil & Environmental Consultants, at (855) 365-2324.

TRD-201903557

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 2, 2019



Notice of Water Rights Application

Notices issued October 1, 2019

APPLICATION NO. 13617; Lower Colorado River Authority's (LCRA), P.O. Box 220, Austin, Texas 78767, Applicant, Certificate of Adjudication No. 14-5476 authorizes the impoundment of water behind Lane City Dam on the Colorado River, Colorado River Basin, Wharton County. Paragraph 5.B. of the certificate requires the gate to be in the down or open position for all periods other than March 15 to October 15 of each year. LCRA is performing rehabilitation work on Lane City Dam as a result of damage to the dam and surrounding areas that occurred in high flow events. LCRA seeks a temporary water use permit, for a period of up to three years, to maintain the existing gate structure in the up or closed position year-round while LCRA is performing the rehabilitation work at the Lane City Dam. The application and fees were received on July 2, 2019. Additional information and fees were received on August 20 and August 22, 2019. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 26, 2019. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, maintaining the water level of the pool of Lane City Dam at or above the top of the gate or dam spillway. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by October 15, 2019.

APPLICATION NO. 3936B; Marecek Land & Cattle, LLC, 2966 Hacienda Wesley Waco, Texas 76706, Applicant, has applied for an amendment to a water use permit to add two diversion reaches along an unnamed tributary of Castleman Creek, and Castleman Creek, Brazos River Basin in McLennan County. The application and partial fees were received on May 28, 2015. Additional information and fees were received on June 29, September 28, 2015, April 8, April

28, 2016, and March 1, 2017. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 31, 2017. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, environmental flow restrictions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by October 14, 2019.

To view the complete issued notice, view the notice on our web site at 222.tecq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tecq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201903560
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 2, 2019

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the TCEQ on September 25, 2019, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. Doug Calhoun dba Bubba's Scrap and Junk Removal; SOAH Docket No. 582-19-1845; TCEQ Docket No. 2017-0926-MLM-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against

Doug Calhoun dba Bubba's Scrap and Junk Removal on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Meghan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201903569
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 2, 2019

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the TCEQ on October 1, 2019, in the matter of the Executive Director of the Texas Commission on Environmental Quality v. R & K LLC dba Discount Self Serve 2; SOAH Docket No. 582-19-3136; TCEQ Docket No. 2018-0796-PST-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against R & K LLC dba Discount Self Serve 2 on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Meghan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201903570
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 2, 2019

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Texas Health and Human Services Commission

Amendment to the Home and Community-based Services Program

Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request to amend the Home and Community-based Services (HCS) waiver administered under section 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2023. The proposed effective date for the amendment is February 14, 2020, or the date CMS approves the amendment, whichever is earlier.

The request proposes to make the following changes based on the 2020-2021 General Appropriations Act (GAA), House Bill (H.B.) 1, 86th Legislature, Regular Session, 2019 (Article II, HHSC, Rider 44(a)(1)) which provided appropriations to increase rates in the HCS program:

Appendix I

--Change the rate methodology to temporarily increase the direct care portion of the supervised living and residential support services rates.

The HCS waiver program provides services and supports to individuals with intellectual disabilities who live in their own homes, a family member's home, or community settings, such as small three and four-person homes. To be eligible for the waiver, an individual must meet financial eligibility criteria and meet the level of care required for admission into an intermediate care facility for individuals with an intellectual disability or related condition.

You may obtain a free copy of the proposed waiver amendment, including the HCS settings transition plan, or ask questions, obtain additional information, or submit comments regarding this amendment or the HCS settings transition plan, by contacting Camille Weizenbaum by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Camille Weizenbaum, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 487-3446

Fax

Attention: Camille Weizenbaum, Waiver Coordinator, at (512) 487-3403

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

The HHSC local offices will post this notice for 30 days. The proposed waiver amendment can be found online on the Health and Human Services website at <http://www.dads.state.tx.us/providers/HCS/>.

TRD-201903573

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: October 2, 2019



Notice of Public Hearing on Long-Range Planning for State Supported Living Centers

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on Tuesday, November 26, 2019, at 9:00 a.m. at the Robert D. Moreton Building, Room M-100, 1100 West 49th St., Austin, TX 78756. The purpose of the hearing is to receive public comment on the long-range planning for State Supported Living Centers, including resident quality of care, community-based services, services to transition back to the community, and availability of services.

Entry is through security at the main entrance of the building.

Parking is available in the visitor's lot located in front of the building. Additional parking is available in the parking garage located directly east of the building in any spot not marked reserved.

Written Comments. Written comments, requests to review comments, or both may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

State Supported Living Centers

Attention: Kristy Almager, Mail Code W511 Winters Building 701 West 51st St. Austin, TX 78751

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

State Supported Living Centers

Attention: Kristy Almager, Mail Code W511 Winters Building 701 West 51st St. Austin, TX 78751

Phone number for package delivery: (512) 438-3807

Fax

Attention: Kristy Almager, Senior Specialist for Strategic Planning and Communications, at (512) 438-4582

Email

SSLCPlanning@hhsc.state.tx.us

TRD-201903554

Karen Ray

General Counsel

Texas Health and Human Services Commission

Filed: October 1, 2019



State Independent Living Council

Request for Proposal

Texas State Independent Living Council (SILC) is a nonprofit organization that assists Texans with a disability to live as independently as they chose. Texas SILC is federally authorized by the Rehabilitation Act of 1973 and Workforce Innovation Act of 2014 and develops the State Plan for Independent Living (SPIL) that serves as a strategic plan to employ Independent Living Services.

Texas SILC has partnered with the Administration for Community Living (ACL) to provide quality of life grants over the next three years to community-based disability organizations serving people living with paralysis. For the purposes of this grant, the definition of paralysis refers to a range of disabling conditions due to stroke, spinal cord injury, multiple sclerosis, cerebral palsy or any central nervous system disorders that results in difficulty or the inability to move the upper or lower extremities. The goal of this pilot is to increase supports and services for Texans living with paralysis in rural and underserved areas of the State that will improve the opportunity to become more independent and integrated in the community of their choice.

Texas SILC is not a direct service provider and relies on community partners to provide direct services and supports for Texans with disabilities and fulfill the goals and objectives of the SPIL. Texas SILC has procured a telehealth-type platform (e.g. Zoom platform) and is searching for community-based organizations to provide virtual Independent Living Services to Texans living with paralysis in unserved or underserved areas of the State. More information about the project may be viewed on the Texas SILC's Virtual Independent Living Services project webpage at <https://www.txsilc.org/projects/vils.html>

The Virtual Independent Living Services project will provide Texas community based organizations with vested interest in serving people living with paralysis the virtual platform to provide independent living services and supports. The virtual platform will provide Texans living

with paralysis access to a secure, HIPPA compliant platform, to receive services and supports.

Individuals will be able to access this platform through a smart-phone application, tablet, computer, or by telephone. The goal of the virtual services platform is to bring services to hundreds of individuals living with paralysis that would have not otherwise been able to access Independent Living Services due to lack of transportation, accessible housing, and personal care attendant support. This platform should also provide social interaction and support for people with paralysis who might be living with depression or other mental health issues. The virtual platform should offer greater access to independent living services to individuals and strengthen their network of peers and mentors.

Specific examples of services that may be provided through virtual platform to Texans living with paralysis in unserved or underserved areas includes but are not limited to: peer support; employment and career development training; personal care attendant management; money management and personal finance; healthy eating and adaptive fitness exercises; civic engagement in and out of institutions, state-facilities, and nursing homes; assistive technology and the use of applications to assist in daily living activities and at work; travel support and training; leadership and development; self and systems advocacy methods; accessible housing and transportation options and rights; resources for parents with disabilities; support groups and discussion topics for caregivers and family members; service animal options and rights; and a host of other topics impacting Texans living with paralysis.

Awarded organizations selected through this request for proposal (RFP) will be required to use and gain competence in the telehealth-type platform to be provided. The specifics of training and proficiency expectations will be discussed and agreed to prior to award.

As part of the grant partnership, Texas SILC is committed to providing technical assistance and training on the tele-health platform. Texas SILC will provide each awarded organization a toolkit that explains in detail what both awarded organizations and participating Texans will need to know to effectively use and leverage the technology. The toolkit will include outreach materials, instructional videos, and troubleshooting support.

The Texas SILC is accepting proposals from community-based organizations that serve people living with paralysis to employ a virtual Independent Living Services to Texans with paralysis. Proposals can be submitted until 5:00 p.m. Central Standard Time, Monday, December 2, 2019, via email to VILS@txsilc.org.

Up to five community-based disability organizations will received up to \$40,000 each to provide virtual Independent Living Services to Texans living with paralysis. All funds must be used in accordance to applicable federal laws and regulations.

An independent review panel will review all applications and make a recommendation for awards to the Texas SILC. Texas SILC will announce awards by 5:00 p.m. Central Standard Time, Friday, December 20, 2019.

Project services must start Monday, January 6, 2020, and must be concluded November 30, 2020. Awardees must report performance and financial data that measure the impact and effectiveness of the award by December 31, 2020.

Texas SILC requests community partners willing to participate in the Virtual Independent Living Services project to complete a proposal that ensures the following project objectives and outcomes are achieved.

Project outcomes include:

Texans with paralysis who live in unserved or underserved areas or represent an underserved population will have greater access to Independent Living Services in the environment they choose;

Texans with paralysis will experience decreased isolation and will better connect with peers.

The project will increase coalitions between community-based organizations that provide supports and services to Texans with paralysis;

Texans with disabilities will have enhanced employment opportunities and have more strategies to thrive in the community of their choice.

Applicants interested in participating as a direct service provider in the project must submit a proposal that is no more than five single-spaced pages in Verdana 12-point font in Microsoft Word and respond to the following items:

Organization Background: please provide the name of your organization, organization address, Tax ID Number, name of contact person and contact information.

Narrative Description of the Project: please provide a narrative description of the type of virtual independent living services your organization plans to provide; milestones; how it will achieve project goals, objectives, and outcomes; and the data your organization will collect and report on that measures the impact and effectiveness of the award (e.g. Number of Texans living with paralysis who received an Independent Living Service). In this section, please include the purpose and scope of the project; location of work; describe the need for the project and solutions; deliverables that will be scheduled; and a timeline. Additional preference will be made for those community-based organizations that describe how the services are targeted to those populations listed in Section 3.2 of the SPIL. The SPIL may be viewed at the Texas SILC's website: www.txsilc.org.

Capacity: please provide an overview of your organization, leadership and staff expertise, organizational ability to provide financial management and performance reporting. Please also provide a budget and budget justification for the project; type of payment schedule preferred (e.g. monthly; quarterly); and if and how the awarded funds will be used for travel.

Respondents are encouraged to provide as much detail in their proposals as possible regarding their community-based services in order to allow the independent review panel and the Texas SILC to accurately assess the best possible candidates. This is particularly valuable given the range of possible services responsive to this RFP.

Awarded organizations who receive an award up to \$40,000 grant under this RFP will not be considered for subsequent awards under this grant.

This grant was supported in part by grant number 90PRRC0002 from The United States Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201. Grantees undertaking projects under government sponsorship are encouraged to express freely their feeling and conclusions. Points of view or opinions do not, however, represent official Administration for Community Living policy.

Questions about this request for proposal must be submitted in writing via email to VILS@txsilc.org by 5:00 p.m. Central Standard Time, Friday, November 25, 2019. All answers will be subsequently published on Texas SILC's Virtual Independent Living Services project webpage: <https://www.txsilc.org/projects/vils.html>

Texas SILC looks forward to developing new partnerships to increase supports and services for Texans living with paralysis living in underserved or unserved areas of the State. Additional Virtual Independent

Living Services project funding opportunities may be available in the Summer of 2020.

TRD-201903539
Colton Read
Council Chair
State Independent Living Council
Filed: October 1, 2019

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Texas Department of Insurance

Company Licensing

Application for Service Insurance Company, a foreign life, accident and/or health company, to change its name to Safeport Insurance Company. The home office is in Bradenton, Florida.

Application for Zale Indemnity Company, a foreign fire and/or casualty company, to change its name to Apex Indemnity Company. The home office is in Spokane, Washington.

Application to do business in the state of Texas for Hornbeam Insurance Company, a foreign fire and/or casualty company. The home office is in Louisville, Kentucky.

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-201903566
James Person
General Counsel
Texas Department of Insurance
Filed: October 2, 2019

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Texas Department of Licensing and Regulation

Notice of Vacancies on Motorcycle Safety Advisory Board

The Texas Department of Licensing and Regulation (Department) announces vacancies on the Motorcycle Safety Advisory Board (Board) established by the Transportation Code, Chapter 662.001. The purpose of the Motorcycle Safety Advisory Board is to advise the Texas Commission on Licensing and Regulation and the Department on rules and educational and technical matters relevant to the administration of this chapter.

The Board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission. The advisory board consists of the following members:

- (1) three members: (a) each of whom must be a licensed instructor or represent a licensed motorcycle school; (b) who must collectively represent the diversity in size and type of the motorcycle schools licensed under this chapter;
- (2) one member who represents the motorcycle dealer retail industry;
- (3) one representative of a law enforcement agency;
- (4) one representative of the Texas A&M Transportation Institute;
- (5) one representative of the Texas A&M Engineering Extension Service; and
- (6) two public members who hold a valid Class M driver's license issued under Chapter 521;

Members serve staggered six-year terms. The terms of three members expire September 1 of each odd-numbered year. The presiding officer of the commission, on approval of the commission, shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a one-year term. The presiding officer of the advisory board may vote on any matter before the advisory board.

The advisory board shall meet at the call of the executive director or the presiding officer of the commission. An advisory board member may not receive compensation for service on the advisory board but is entitled to reimbursement for actual and necessary expenses incurred in performing the functions as a member of the advisory board, subject to the General Appropriations Act.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202, fax (512) 475-2874 or e-mail advisory.boards@tdlr.texas.gov.

Issued in Austin, Texas on October 11, 2019.

TRD-201903575
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: October 2, 2019

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Texas Lottery Commission

Correction of Error

The Texas Lottery Commission published the game procedure for Scratch Ticket Game Number 2182 "FROSTY FUN" in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5674). Due to an error by the Texas Register, the name of the Scratch Ticket Game contained a misspelling in the title section of this game procedure only. The word "Number" was misspelled. The title section of this game procedure is corrected as follows:

Texas Lottery Commission

Scratch Ticket Game Number 2182 "FROSTY FUN"

TRD-201903490

◆ ◆ ◆
Scratch Ticket Game Number 2088 "MERRY MONEY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2088 is "MERRY MONEY". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2088 shall be \$5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2088.

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: BONUS

QUICK WIN: GOLD BAR SYMBOL, PIGGY BANK SYMBOL, DICE SYMBOL, CROWN SYMBOL, PINEAPPLE SYMBOL, SUN SYMBOL, ANCHOR SYMBOL, STACK OF BILLS SYMBOL, LEMON SYMBOL, HORSESHOE SYMBOL, UMBRELLA SYMBOL, BAG OF MONEY SYMBOL, ELEPHANT SYMBOL, COIN SYMBOL, DIAMOND SYMBOL, WATERMELON SYMBOL, BOLT SYMBOL, STRAWBERRY SYMBOL and CLOVER SYMBOL. MAIN: WREATH SYMBOL, TREE SYMBOL, SNOWMAN SYMBOL, SNOWFLAKE SYMBOL, SKATE SYMBOL, HOLLY SYMBOL, SNOW GLOBE SYMBOL, GIFT SYMBOL, REINDEER SYMBOL, CANDY CANE SYMBOL, BELLS SYMBOL, HORSE SYMBOL, STAR SYMBOL, BOOT SYMBOL, IGLOO SYMBOL, SWEATER SYMBOL, HAT SYMBOL, DRUM SYMBOL,

CANDLE SYMBOL, TURKEY SYMBOL, STOCKING SYMBOL, SLED SYMBOL, PARKA SYMBOL, GINGERBREAD SYMBOL, HORN SYMBOL, PENGUIN SYMBOL, MITT SYMBOL, BOW SYMBOL, LIST SYMBOL, TRAIN SYMBOL, SCARF SYMBOL, 2X SYMBOL, 5X SYMBOL, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$250, \$500, \$1,000 and \$100,000.

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. 2088 - 1.2D

PLAY SYMBOL	CAPTION
GOLD BAR SYMBOL	BAR
PIGGY BANK SYMBOL	PIGBNK
DICE SYMBOL	DICE
CROWN SYMBOL	CROWN
PINEAPPLE SYMBOL	PNAPLE
SUN SYMBOL	SUN
ANCHOR SYMBOL	ANCHOR
STACK OF BILLS SYMBOL	BILLS
LEMON SYMBOL	LEMON
HORSESHOE SYMBOL	HRSHOE
UMBRELLA SYMBOL	UMBRLA
MONEY BAG SYMBOL	BAG
ELEPHANT SYMBOL	ELPHANT
COIN SYMBOL	COIN
DIAMOND SYMBOL	DIAMND
WATERMELON SYMBOL	WTMLN
BOLT SYMBOL	BOLT
STRAWBERRY SYMBOL	STRWBY
CLOVER SYMBOL	CLOVER
WREATH SYMBOL	WREATH
TREE SYMBOL	TREE
SNOWMAN SYMBOL	SNWMAN
SNOWFLAKE SYMBOL	SNWFLK
SKATE SYMBOL	SKATE
HOLLY SYMBOL	HOLLY
SNOW GLOBE SYMBOL	SNWGLB
GIFT SYMBOL	GIFT
REINDEER SYMBOL	DEER
CANDY CANE SYMBOL	CANE
BELLS SYMBOL	BELLS
HORSE SYMBOL	HORSE
STAR SYMBOL	STAR
BOOT SYMBOL	BOOT
IGLOO SYMBOL	IGLOO
SWEATER SYMBOL	SWEATR
HAT SYMBOL	HAT
DRUM SYMBOL	DRUM

CANDLE SYMBOL	CANDLE
TURKEY SYMBOL	TURKEY
STOCKING SYMBOL	STKNG
SLED SYMBOL	SLED
PARKA SYMBOL	PARKA
GINGERBREAD SYMBOL	GNGBD
HORN SYMBOL	HORN
PENGUIN SYMBOL	PNGUIN
MITT SYMBOL	MITT
BOW SYMBOL	BOW
LIST SYMBOL	LIST
TRAIN SYMBOL	TRAIN
SCARF SYMBOL	SCARF
2X SYMBOL	WINX2
5X SYMBOL	WINX5
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$250	TOFF
\$500	FVHN
\$1,000	ONTH
\$100,000	100 TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2088), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2088-0000001-001.

H. Pack - A Pack of the "MERRY MONEY" Scratch Ticket Game contains 075 Tickets. 75 fanfolded, perforated Tickets per pack in one (1) Ticket per strip. Ticket 001 will be shown on the front of the pack; the back of Ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a pack. Every other pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the pack and the front of Ticket 075 will be shown on the back of the pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "MERRY MONEY" Scratch Ticket Game No. 2088.

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 "MERRY MONEY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose sixty-one (61) Play Symbols. BONUS QUICK WIN: If the player reveals 2 matching symbols in the same BONUS QUICK WIN, the player wins \$100! MAIN PLAY AREA: In each GAME, if a player matches any of YOUR SYMBOLS to the WINNING SYMBOL, the player wins the prize for that symbol. If a player reveals a "2X" symbol, the player wins DOUBLE the prize for that symbol. If a player reveals a "5X" symbol, the player wins 5 TIMES the prize for that symbol. Each GAME is played separately. 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 sixty-one (61) 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 sixty-one (61) 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 sixty-one (61) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the sixty-one (61) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty-eight (28) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$100,000 will each appear at least once, except on Tickets winning twenty-five (25) times or more.

E. BONUS QUICK WIN Play Areas: A Ticket can win up to three (3) times in this play area: once in each of the three (3) BONUS QUICK WIN play areas.

F. BONUS QUICK WIN Play Areas: Winning Tickets will contain two (2) matching Play Symbols in a BONUS QUICK WIN play area.

G. BONUS QUICK WIN Play Areas: Winning combinations across all three (3) BONUS QUICK WIN play areas will be different.

H. BONUS QUICK WIN Play Areas: A BONUS QUICK WIN Play Symbol will not appear more than one (1) time per ticket across all three (3) BONUS QUICK WIN play areas, unless used in a winning combination.

I. BONUS QUICK WIN Play Areas: There will be no more than two (2) matching BONUS QUICK WIN Play Symbols on a Ticket.

J. BONUS QUICK WIN Play Areas: Consecutive Non-Winning Tickets within a Pack will not have matching BONUS QUICK WIN play areas. For example, if the first Ticket contains a PIGGY BANK Play Symbol and a PINEAPPLE Play Symbol in any BONUS QUICK WIN play area, then the next Ticket may not contain a PIGGY BANK Play Symbol and a PINEAPPLE Play Symbol in any BONUS QUICK WIN play area in any order.

K. MAIN Play Area: Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

L. MAIN Play Area: A Ticket can win up to twenty-five (25) times in the main play area.

M. MAIN Play Area: No matching non-winning YOUR SYMBOLS Play Symbols will appear on a Ticket.

N. MAIN Play Area: On both winning and Non-Winning Tickets, there will be no matching WINNING SYMBOL Play Symbols.

O. MAIN Play Area: On both winning and Non-Winning Tickets, there will be no matching WINNING SYMBOL Play Symbols.

P. MAIN Play Area: On both winning and Non-Winning Tickets, a WINNING SYMBOL Play Symbol in a GAME will never match a YOUR SYMBOLS Play Symbol from a different GAME.

Q. MAIN Play Area: Non-winning Prize Symbols will be different within a GAME. A non-winning Prize Symbol will not appear more than four (4) times on a Ticket.

R. MAIN Play Area: Non-winning Prize Symbols will be different within a GAME. A non-winning Prize Symbol will not appear more than three (3) times on a Ticket.

S. MAIN Play Area: Consecutive Non-Winning Tickets within a Pack will not have matching GAMES. For instance, if the first Ticket contains a SNOWFLAKE Play Symbol, GIFT Play Symbol, HORSE Play Symbol, PENGUIN Play Symbol and a WREATH Play Symbol in any GAME, then the next Ticket may not contain a SNOWFLAKE Play Symbol, GIFT Play Symbol, HORSE Play Symbol, PENGUIN Play Symbol and a WREATH Play Symbol in any order.

T. MAIN Play Area: The "2X" (WINX2) Play Symbol will never appear as a WINNING SYMBOL Play Symbol.

U. MAIN Play Area: The "2X" (WINX2) Play Symbol will never appear more than two (2) times on a Ticket and will never appear more than once in the same GAME.

V. MAIN Play Area: The "2X" (WINX2) Play Symbol will never appear on a Non-Winning Ticket.

W. MAIN Play Area: The "2X" (WINX2) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

X. MAIN Play Area: The "5X" (WINX5) Play Symbol will never appear as a WINNING SYMBOL Play Symbol.

Y. MAIN Play Area: The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

Z. MAIN Play Area: The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

AA. MAIN Play Area: The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "MERRY MONEY" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$250 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100, \$250 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 "MERRY MONEY" Scratch Ticket Game prize of \$1,000 or \$100,000, 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 "MERRY MONEY" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
 2. in default on a loan made under Chapter 52, Education Code;
 3. in default on a loan guaranteed under Chapter 57, Education Code; or
 4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.
- E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "MERRY MONEY" 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 "MERRY MONEY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto.

Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2088. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2088 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5	864,000	8.33
\$10	592,000	12.16
\$20	208,000	34.62
\$50	125,000	57.60
\$100	19,300	373.06
\$250	2,600	2,769.23
\$500	1,400	5,142.86
\$1,000	50	144,000.00
\$100,000	5	1,440,000.00

*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 3.97. 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. 2088 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2088, 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-201903530

Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: October 1, 2019

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South East Texas Regional Planning Commission

Notice of Request for Proposals - Hike and Bike Plan 2037 Update

The South East Texas Regional Planning Commission (SETRPC) of Jefferson, Hardin and Orange Counties, Texas, the Transportation and Environmental Resources Division is requesting proposals for review, refinement and updating of the South East Texas Hike and Bike Plan 2037.

The Request for Proposals (RFP) can be downloaded from the SETRPC Website at www.setrpc.org. Interested firms may also contact Bob Dickinson, Director of the Transportation and Environmental Resources Division, via fax, (409) 729-651 or e-mail, bdickinson@setrpc.org, to obtain an RFP package.

Proposals must be properly sealed, marked and received no later than 2:00 p.m. CENTRAL TIME on November 15, 2019. Proposals received after this time will not be considered but will be maintained in the bid file and shall not be considered for this offering. All other proposals will be publicly opened and announced at 2:30 p.m. CENTRAL TIME on November 15, 2019, in the SETRPC-Transportation Conference Room at 2210 Eastex Freeway, Beaumont, Texas, 77703.

TRD-201903453

Bob Dickinson

Director

South East Texas Regional Planning Commission

Filed: September 24, 2019

Texas Department of Transportation

Aviation Division - Request for Qualifications (RFQ) for Professional Engineering Services

The City of McKinney, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a qualified firm for professional services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: The City of McKinney; TxDOT CSJ No.: 2018MCKNY.

The TxDOT Project Manager is Ryan Hindman, P.E.

Scope: Provide engineering and design services, including construction administration, to:

1. extend Runway 18-36;
2. extend parallel Taxiway B;
3. relocation of NAVAIDS;
4. relocation of lighting; and
5. relocation of roads.

In accordance with Texas Government Code §2161.252, qualifications that do not contain an up-to-date "HUB Subcontracting Plan (HSP)" are non-responsive and will be rejected without further evaluation. In addition, if TxDOT determines that the HSP was not developed in good faith, it will reject the qualifications for failing to comply with material specifications based on the RFQ.

A voluntary pre-submittal meeting is scheduled from **11:00 a.m. - 1:00 p.m. on October 29, 2019**, at the McKinney National Airport, 1500 E. Industrial Blvd., Suite 201, McKinney, Texas 75069. There will be an opportunity for interested firms to ask questions followed by an airport site visit.

Utilizing multiple engineering and design and construction grants over the course of the next five years, future scope of work items at the McKinney National Airport may include: airfield drainage improvements; reconstruct and extend hangar access taxiway B5; and, rehabilitate and realign taxiway/taxilane A between taxiways B2 and B4 to include relocation of a portion of taxiway B3.

The City of McKinney reserves the right to determine which of the services listed above may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services listed above.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at <http://www.txdot.gov/inside-txdot/division/aviation/projects.htm>

by selecting "McKinney National Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (800)-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, or submits a cover page with the AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 must be received in the TxDOT Aviation eGrants system no later than November 13, 2019, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at <http://txdot.gov/government/funding/egrants-2016/aviation.html>.

An instructional video on how to respond to a solicitation in eGrants is available at <http://txdot.gov/government/funding/egrants-2016/aviation.html>.

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm>.

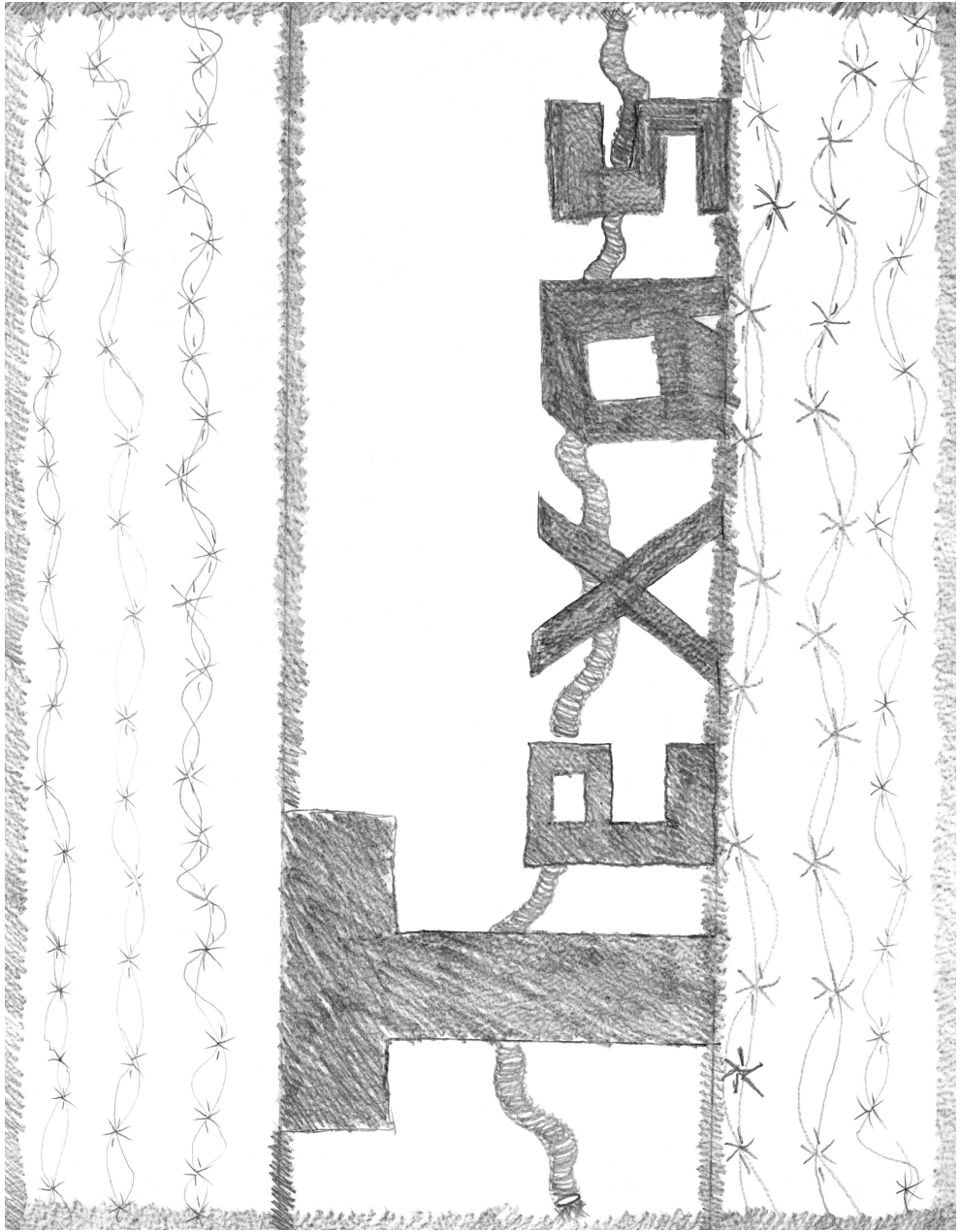
The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under Information for Consultants. All firms will be notified and the top-rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top-rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Ryan Hindman, P.E., Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or avn-egrantshelp@txdot.gov.

TRD-201903500
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: September 30, 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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