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IN THIS ISSUE

PROPOSED RULES

TEXAS DEPARTMENT OF LICENSING AND REGULATION

ELIMINATION OF ARCHITECTURAL BARRIERS

16 TAC §68.100, §68.104.....499

GENERAL LAND OFFICE

EXPLORATION AND LEASING OF STATE OIL AND GAS

31 TAC §9.35.....501

COMPTROLLER OF PUBLIC ACCOUNTS

TAX ADMINISTRATION

34 TAC §3.102.....502

34 TAC §3.121.....505

34 TAC §3.441.....509

34 TAC §3.1002.....512

WILLIAMSON COUNTY TAX ASSESSOR-COLLECTOR

MOTOR VEHICLE TITLE SERVICES

43 TAC §§435.1 - 435.16514

WITHDRAWN RULES

TEXAS DEPARTMENT OF PUBLIC SAFETY

DRIVER LICENSE RULES

37 TAC §15.30.....521

ADOPTED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §§351.805, 351.821, 351.823, 351.827, 351.833, 351.837..523

1 TAC §§351.819, 351.831, 351.835.....524

1 TAC §351.839.....524

REIMBURSEMENT RATES

1 TAC §355.8065, §355.8066.....527

1 TAC §355.8212.....527

TEXAS DEPARTMENT OF AGRICULTURE

COMMUNITY DEVELOPMENT

4 TAC §30.3.....528

4 TAC §30.60, §30.61.....529

4 TAC §30.60.....529

TEXAS ANIMAL HEALTH COMMISSION

BOVINE VIRAL DIARRHEA

4 TAC §44.1, §44.2.....529

TEXAS HISTORICAL COMMISSION

HISTORIC SITES

13 TAC §16.13.....531

TEXAS DEPARTMENT OF LICENSING AND REGULATION

PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §60.23.....534

16 TAC §60.36, §60.40.....535

16 TAC §60.302.....535

16 TAC §60.306.....535

BOILERS

16 TAC §65.12.....535

ELECTRICIANS

16 TAC §73.71.....537

AIR CONDITIONING AND REFRIGERATION

16 TAC §75.75.....539

USED AUTOMOTIVE PARTS RECYCLERS

16 TAC §§87.15, 87.44, 87.45, 87.85.....541

16 TAC §§87.24 - 87.26, 87.46541

ORTHOTISTS AND PROSTHETISTS

16 TAC §§114.10, 114.20, 114.21, 114.23, 114.28, 114.50, 114.80, 114.90.....542

MASSAGE THERAPY

16 TAC §117.2.....547

16 TAC §§117.20, 117.21, 117.23, 117.25547

16 TAC §117.31.....547

16 TAC §117.40.....548

16 TAC §§117.50 - 117.55, 117.57 - 117.59, 117.61, 117.62, 117.64 - 117.68.....548

16 TAC §117.56, §117.60.....549

16 TAC §§117.80, 117.82, 117.83549

16 TAC §§117.90, 117.91, 117.93549

16 TAC §117.100.....549

TEXAS BOARD OF NURSING

CONTINUING COMPETENCY

22 TAC §216.8.....550

LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.3.....551

22 TAC §217.5.....551

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS	
RULES OF PROFESSIONAL CONDUCT	
22 TAC §573.68.....	553
PRACTICE AND PROCEDURE	
22 TAC §575.25.....	553
22 TAC §575.25.....	554
DEPARTMENT OF STATE HEALTH SERVICES	
FREESTANDING EMERGENCY MEDICAL CARE FACILITIES	
25 TAC §131.2.....	555
25 TAC §131.46.....	555
25 TAC §131.45.....	555
HOSPITAL LICENSING	
25 TAC §133.2.....	556
25 TAC §133.41.....	556
AMBULATORY SURGICAL CENTERS	
25 TAC §135.15.....	578
PEER ASSISTANCE	
25 TAC §§451.101 - 451.112.....	579
HEALTH AND HUMAN SERVICES COMMISSION	
PEER ASSISTANCE PROGRAMS FOR IMPAIRED PROFESSIONALS	
26 TAC §§8.101, 8.103, 8.105, 8.107, 8.109, 8.111, 8.113, 8.115, 8.117, 8.119, 8.121, 8.123, 8.125.....	579
TEXAS PARKS AND WILDLIFE DEPARTMENT	
FISHERIES	
31 TAC §57.971, §57.973.....	581
COMPTROLLER OF PUBLIC ACCOUNTS	
TAX ADMINISTRATION	
34 TAC §3.1201.....	589
TEXAS WORKFORCE COMMISSION	
UNEMPLOYMENT INSURANCE	
40 TAC §815.117.....	589
TRANSFERRED RULES	
Texas Water Development Board	
Rule Transfer.....	593
RULE REVIEW	
Proposed Rule Reviews	
Texas Department of Transportation.....	595

TABLES AND GRAPHICS	597
IN ADDITION	
Office of the Attorney General	
Texas Health and Safety Code and Texas Water Code Settlement Notice.....	609
Comptroller of Public Accounts	
Certification of the Average Closing Price of Gas and Oil - December 2019.....	609
Notice of Hearing on §3.334 - Local Sales and Use Taxes.....	610
Office of Consumer Credit Commissioner	
Notice of Rate Ceilings.....	610
Credit Union Department	
Application for a Merger or Consolidation.....	610
Application to Amend Articles of Incorporation.....	610
Application to Expand Field of Membership.....	610
Texas Commission on Environmental Quality	
Agreed Orders.....	611
Enforcement Orders.....	614
Enforcement Orders.....	616
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 159607.....	618
Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions.....	619
Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions.....	619
Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions.....	620
Notice of Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40306.....	621
Texas Ethics Commission	
List of Late Filers.....	622
Texas Facilities Commission	
Request for Proposals (RFP) #303-1-20622B.....	622
Request for Proposals (RFP) #303-1-20682.....	622
General Land Office	
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program.....	622
Office of the Governor	
Notice of Public Hearing on Proposed Revisions to 1 TAC Chapter 3, Subchapter H.....	623
Department of State Health Services	

Emergency Medical Services Penalty Matrix.....	623	Public Utility Commission of Texas	
Licensing Actions for Radioactive Materials	638	Notice of Application for True-Up of 2017 Federal Universal Service Fund Impacts to the Texas Universal Service Fund.....	650
Licensing Actions for Radioactive Materials	642	Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h).....	651
Order Extending the Temporary Scheduling of FUB-AMB.....	644	Supreme Court of Texas	
Texas Department of Housing and Community Affairs		Order Amending Texas Rule of Civil Procedure 277.....	651
Notice of Public Hearing (Granada Terrace Apartments).....	644	Order Amending Texas Rules of Civil Procedure 116 and 117.....	656
Notice of Public Hearing (Scott Street Lofts Apartments).....	645	Texas Department of Transportation	
Texas Department of Insurance		Aviation Division - Request for Qualifications (RFQ) for Professional Engineering Services	661
Company Licensing	645	Aviation Division - Request for Qualifications (RFQ) for Professional Engineering Services	661
Texas Department of Insurance, Division of Workers' Compensation		Texas Water Development Board	
FY 2020 Research Agenda for the Workers' Compensation Research and Evaluation Group	645	Applications for December 2019	662
Texas Lottery Commission			
Scratch Ticket Game Number 2210 "\$100 FRENZY"	646		

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.texas.gov/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.texas.gov

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://texasattorneygeneral.gov/og/open-government>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.texas.gov>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

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 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 68. ELIMINATION OF ARCHITECTURAL BARRIERS

16 TAC §68.100, §68.104

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 68, §68.100 and new rule §68.104, regarding the Elimination of Architectural Barriers Program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 68, implement Texas Government Code, Chapter 469, Elimination of Architectural Barriers.

The proposed rules update a reference from the "Commission" to the "Department." The proposed rules also implement necessary changes required by House Bill (HB) 3163, 86th Legislature, Regular Session (2019).

The proposed rules were presented to and discussed by the Architectural Barriers Advisory Committee at its meeting on December 16, 2019. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §68.100, by updating the reference from the "Commission" to the "Department."

Proposed new §68.104 implements statutory changes required by HB 3163, which set requirements for paved accessible parking spaces. This includes painting the international symbol of access on paved accessible parking spaces along with the words "NO PARKING" adjacent to the space. It also added a requirement for signage identifying the potential consequences for parking illegally in an accessible space.

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. Compliance with new statutory requirements and associated costs will be the responsibility of the facility owners.

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

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon determined that for each year of the first five years the proposed rules are in effect, no impact on local employment is anticipated. The required changes will only be for new construction projects that must be registered with the Department, pursuant to TAC §469.101. The additional requirements will not change the number of people working on these projects. Therefore, the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be to ensure that access aisles are clear and accessible parking spots are available for persons with disabilities. The new signage and lettering requirements will allow for clearer notice of which parking spaces are accessible only spaces and that parking is not allowed in the adjacent aisles. The proposed rules should prevent vehicles that should not be parking in those spaces and aisles from parking in them and thereby make parking more accessible for persons with disabilities.

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 minimal costs to persons who are required to comply with the proposed rules. A single sign that meets both the new and existing requirements can be purchased in lieu of two signs to comply with the current and new requirements. Alternately, if a building owner only needs an additional sign that meets the new requirements for an accessible space regarding enforcement of violators (towing), this cost would be minimal. There would be no additional costs associated with inspection by registered accessibility specialists to ensure compliance that the new requirements have been met.

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

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact State-

ment and a Regulatory Flexibility Analysis, as detailed under Government Code §2006.002, is not required.

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

The proposed rules do have a fiscal note that imposes a cost on regulated persons; however, the proposed rules fall under the exception for rules that implement legislation under Government Code §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 do not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do expand, limit, or repeal an existing regulation. The proposed rules implement changes to the statute by expanding the requirements for accessible parking spaces by requiring new signage regarding violators, conspicuously marking spaces, and painting the access aisles adjacent to paved accessible spaces.
7. The proposed rules do not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENTS

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

STATUTORY AUTHORITY

The proposed rules are proposed under Occupations Code, Chapters 51 and Government Code, Chapter 469, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary

to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Occupations Code, Chapters 51 and 1051, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the proposed rules.

§68.100. *Technical Standards and Technical Memoranda.*

(a) (No change.)

(b) The Texas Department [~~Commission~~] of Licensing and Regulation may publish Technical Memoranda to provide clarification of technical matters relating to the Texas Accessibility Standards, if such memoranda have been reviewed by the Elimination of Architectural Barriers Advisory Committee.

§68.104. *Accessible Parking Spaces.*

(a) A paved accessible parking space must include:

(1) the international symbol of access painted conspicuously on the surface in a color that contrasts the pavement;

(2) the words "NO PARKING" painted on any access aisle adjacent to the parking space. The words must be painted:

(A) in all capital letters;

(B) with a letter height of at least one foot, and a stroke width of at least two inches; and

(C) centered within each access aisle adjacent to the parking space; and

(3) a sign identifying the consequences of parking illegally in a paved accessible parking space. The sign must:

(A) at a minimum state "Violators Subject to Fine and Towing" in a letter height of at least one inch;

(B) be mounted on a pole, post, wall or freestanding board;

(C) be no more than eight inches below a sign required by Texas Accessibility Standards, 502.6; and

(D) be installed so that the bottom edge of the sign is no lower than 4 feet and no higher than 6 feet above ground level.

(b) A sign that meets the requirements set in Texas Accessibility Standards, 502.6 that includes the required language in subsection (a)(3)(A) satisfies this section.

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

Filed with the Office of the Secretary of State on January 13, 2020.

TRD-202000121

Brad Bowman
General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: February 23, 2020

For further information, please call: (512) 463-3671

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 9. EXPLORATION AND LEASING OF STATE OIL AND GAS

SUBCHAPTER C. MAINTAINING A STATE OIL AND GAS LEASE

31 TAC §9.35

The General Land Office ("GLO") proposes an amendment to 31 TAC §9.35 (relating to Producing the State Lease) by amending paragraph (2) and adding paragraph (4).

The proposed amendment clarifies the procedures and standards for obtaining permission to commingle oil and gas production from wells in which the State holds a royalty interest.

FISCAL AND EMPLOYMENT IMPACTS

Brian Carter, Senior Deputy Director of Asset Enhancement of the GLO, has determined that (i) during the first five-year period the proposed amended rule is in effect, there will be no cost or fiscal implications for local governments expected as a result of enforcing or administering the rule, and (ii) there will be no impact on employment expected.

SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITY ANALYSIS

The GLO has determined that for each year of the first five years the proposed amended rule will be in effect, there will be minimal economic cost to small businesses, micro businesses, rural communities and individuals based on the proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rule would be in effect: the proposed rule does not create or eliminate a government program; implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency; the proposed rule does not require an increase or decrease in fees paid to the agency; the proposed rule does not create a new regulation; the proposed rule does not expand, limit, or repeal an existing regulation; the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and the proposed rule does not affect this state's economy.

LOCAL EMPLOYMENT IMPACT

The GLO has determined the proposed rule will not affect a local economy.

PUBLIC BENEFIT

Brian Carter, Senior Deputy Director of Asset Enhancement of the GLO, has determined that during the first five-year period the proposed amended rule is in effect, the public benefits expected from the proposed amendment include clarification of the procedures and standards used by the GLO in evaluating requests for commingling, and more efficient use of staff time in management of mineral production and income for the Permanent School Fund. Mr. Carter has further determined that, during the same period, as compared to the rule in its current form, there are no additional persons required to comply with this rule after the amendment, and that there are no net increased costs

to persons who seek permission to commingle as a result of the amendment.

PUBLIC COMMENT REQUEST

Comments may be submitted to Walter Talley, Office of General Counsel, Texas General Land Office, 1700 N. Congress Avenue, Austin Texas 78701 or by facsimile (512) 463-6311, no later than 30 days after publication.

STATUTORY AUTHORITY

This amendment to 31 TAC §9.35 is proposed pursuant to the authority set out in Texas Natural Resources Code §31.051(3), which states that the Commissioner of the GLO shall make and enforce suitable rules consistent with the law.

Jeff Gordon, General Counsel of the GLO, has determined, and certifies, that the proposed amendment is within the GLO's authority to adopt.

§9.35. *Producing the State Lease.*

(a) General provisions applicable to producing oil and/or gas on state leases.

(1) (No change.)

(2) All wells producing natural gas and water or natural gas and surface hydrocarbon liquids or natural gas, water and surface hydrocarbon liquids must be produced through oil and gas separators of ample capacity and in good working order. All separators shall be of conventional type (or other equipment at least as efficient) to provide for separation and measurement of all lease or pooled unit gas and liquid hydrocarbon production before sale or surface commingling with production from any other lease and/or pooled unit. All measurement shall be in accordance with the American Gas Association (AGA) standards and all applicable chapters of the American Petroleum Institute (API) Manual of Petroleum Measurement Standards (MPMS) subject to the following: (i) gross lease or pooled unit gas and liquid hydrocarbon production must be measured by, at the option of the lessee, either (A) continuous measurement, or (B) utilization of periodic production well tests as described in MPMS Chapter 20.5 with each lease or pooled unit being tested at least once per month; and (ii) all lessees shall perform both gas and oil sampling with compositional analyses at the outlet of the initial stage of separation for each lease and/or pooled unit with (A) the gas sampling occurring within fifteen (15) days of the expiration of each six (6) month interval, and (B) the oil sampling occurring initially within thirty (30) days after completion of the well, and again between 24 to 36 months after such initial sampling. Industry standard laboratory analysis shall be performed on such samples in compliance with ASTM, API, and GPA standards for gas and oil. Lessees shall retain the foregoing required oil and gas analysis data and make such data available to the GLO as directed per the authority retained under §9.32(c)(3)(D) of this title, upon request. Requests submitted by the lessee [However, upon review and approval by the GLO, a waiver granting exception to this requirement may be provided. The lessee shall request and obtain the waiver from GLO staff before installation of full well stream/wet gas meters in lieu of setting a separator. Waiver requests] shall be sent to the Texas General Land Office, Attention: Mineral Leasing, 1700 N. Congress Ave., Austin, TX 78701-1495.

(3) (No change.)

(4) If, within a group of properties comprised of surface commingled leases, tracts, and/or pooled units (Commingled Properties):

(A) all state leases pertaining to the Commingled Properties were executed prior to January 7, 1999; or

(B) the State's largest revenue interest among the Commingled Properties is less than 5.000%; or

(C) the State has a net revenue interest in each and all of the Commingled Properties and those net revenue interests are identical to a tolerance of 0.001, then upon written certification by Lessee to the GLO that one or more of these conditions has been met, such Commingled Properties are deemed to have obtained permission from the GLO as required under §9.35(a)(3) of this title until and unless additional, non-qualifying surface commingling occurs in conjunction with the Commingled Properties, at which time written permission from the GLO shall be required.

(b) - (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.

Filed with the Office of the Secretary of State on January 7, 2020.

TRD-202000046

Mark Havens

Chief Clerk, Deputy Land Commissioner

General Land Office

Earliest possible date of adoption: February 23, 2020

For further information, please call: (512) 475-1859



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER G. CIGARETTE TAX

34 TAC §3.102

The Comptroller of Public Accounts proposes amendments to §3.102 concerning applications, definitions, permits, and reports. The amendments implement House Bill 4614, 86th Legislature, 2019, effective September 1, 2019. The bill adds definitions to Chapter 154 and updates cigarette permit requirements. The comptroller amends this section to comply with these provisions.

The comptroller amends subsection (a) to revise existing definitions as described in Chapter 154 and include a definition of export warehouse and engage in business as added by HB 4614. The comptroller amends existing definitions in paragraphs (2) "bonded agent," (3) "cigarette," (4) "commercial business location," (6) "distributor," (9) "first sale," (11) "manufacturer," (13) "permit," (14) "permit holder," (15) "place of business," (16) "retailer," and (17) "stamp" to give the terms the meanings as amended by HB 4614. The comptroller renumbers subsequent paragraphs accordingly.

The comptroller amends subsections (b)(1) and (2) to include a permit requirement for a person who engages in the business of an export warehouse. The comptroller also adds new paragraph (6) to address non-issuance of a permit for a residence or a unit in a public storage facility. The comptroller adds new paragraph (7) to indicate that a permit is not required for a research facility that possesses and only uses cigarettes for experimental purposes. Lastly, the comptroller adds paragraph (8)

to address permitting requirements for a person who provides a roll-your-own machine for consumers to use.

The comptroller adds subsection (c) to outline sale and purchase requirements between permit holders based on revisions to the Texas Tax Code 154.1015 (Sales; Permit Holders and Nonpermit Holders) from HB 4614. The comptroller renumbers subsequent subsections accordingly.

The comptroller amends subsection (e) to remove the permit fee requirement for an importer permit. The comptroller amends paragraph (6) to remove language regarding the effective date of a retailer permit issuance as this is twenty years in the past. The comptroller amends paragraphs (7) and (8) by reversing the order of the paragraphs so that fees for permit requirements are listed before a penalty for failure to obtain a permit. The comptroller amends paragraph (7) to state that an export warehouse is not required to pay a permit fee. The comptroller amends paragraph (10) to address permits for a business that closes prior to the permit expiration.

The comptroller amends subsection (f) to add that the comptroller shall issue a permit upon receipt of an application and applicable fees from a person who intends to engage in business activities related to an export warehouse.

The comptroller amends subsection (g) to include that a manufacturer must file a report on or before the 25th of each month.

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 conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The proposed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

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

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

The amendments implement Tax Code, §§154.001 (Definitions), 154.002 (Storage), 154.101 154.1015 (Sales; permit holders and nonpermit holders), 154.110 (Issuance of permit), and 154.204 (Manufacturer's records and reports).

§3.102. *Applications, Definitions, Permits, and Reports.*

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

(1) Agency--The Comptroller of Public Accounts of the State of Texas or the comptroller's duly authorized agents and employees.

(2) Bonded agent--A person in this state who is a third-party [an] agent of a manufacturer [person] outside this state and who receives cigarettes in interstate commerce and stores the cigarettes for distribution or delivery to distributors under orders from the manufacturer [person outside this state].

(3) Cigarette--A roll for smoking;

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and[-]

(B) that [A cigarette] is not a cigar.

(4) Commercial business location--The entire premises occupied by a permit applicant or a person required to hold a permit under Tax Code, Chapter 154 (Cigarette Tax). A commercial business location cannot include a residence or a unit in a public storage facility [The premises where cigarettes are stored or kept cannot be a residence or a unit in a public storage facility].

(5) Consumer--A person who possesses cigarettes for personal consumption.

(6) Distributor--A person who:

(A) is authorized to purchase, for the purpose of making a first sale in this state, cigarettes in unstamped packages from manufacturers who distribute cigarettes in this state and to stamp cigarette packages; [cigarettes in unstamped packages from manufacturers for the purpose of making a first sale in this state; a person who is authorized to stamp cigarette packages; a person who ships, transports, or imports cigarettes into this state; a person who acquires, possesses, and makes a first sale of cigarettes in this state; or a person who manufactures or produces cigarettes.]

(B) ships, transports, imports into this state, acquires, or possesses cigarettes and makes a first sale of the cigarettes in this state;

(C) manufactures or produces cigarettes; or

(D) is an importer.

(7) Engage in business--A person engaging either directly or through a representative, in any of the following activities:

(A) selling cigarettes in or into this state;

(B) using a warehouse or another location to store cigarettes; or

(C) otherwise conducting through a physical presence cigarette-related business in this state.

(8) Export warehouse--A person in this state who receives cigarettes in unstamped packages from manufacturers and stores the cigarettes for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(9) [(7)] First sale--Except as otherwise provided, first sale means the first transfer of possession in connection with a purchase, sale, or any exchange for value of cigarettes in or into this state, which includes: [intrastate commerce;]

(A) the sale of tobacco products by a distributor in or outside this state to a distributor, wholesaler, or retailer in this state; and a manufacturer in this state who transfers the tobacco products in this state; and does not include:

(i) the sale of tobacco products by a manufacturer outside this state to a distributor in this state; or

(ii) the transfer of tobacco products from a manufacturer outside this state to a bonded agent in this state;

(B) the first use or consumption of cigarettes in this state; or

(C) the loss of cigarettes in this state whether through negligence, theft, or other unaccountable loss. First sale also includes giving away cigarettes as promotional items.

(10) [(8)] Importer--A person who ships, transports, or imports into this state cigarettes manufactured or produced outside the United States for the purpose of making a first sale in this state.

(11) [(9)] Manufacturer--A person who manufactures, fabricates, or assembles cigarettes, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes, for sale or distribution [and sells cigarettes to a distributor].

(12) [(10)] Manufacturer's representative--A person employed by a manufacturer to sell or distribute the manufacturer's stamped cigarette packages.

(13) [(11)] Permit--Any agency license, certificate, approval, registration, or similar form of permission required by law to buy, sell, stamp, store, transport, or distribute cigarettes. A permit includes a vending machine decal.

(14) [(12)] Permit holder--A person who has been issued a bonded agent, distributor, importer, export warehouse, manufacturer, wholesaler, or retailer permit under Tax Code, §154.101 (Permits).

(15) [(13)] Place of business--

(A) a [A] commercial business location where cigarettes are sold;

(B) a commercial business location where cigarettes are kept for sale or consumption or otherwise stored; [or]

(C) a vehicle from which cigarettes are sold; or

(D) a vending machine from which cigarettes are sold.

(16) [(14)] Retailer--A person who engages in the business [practice] of selling cigarettes to consumers. The owner of a [coin-operated] cigarette vending machine is a retailer.

(17) [(15)] Stamp--Includes only a [A] stamp that:

(A) is printed, manufactured, or made by authority of the comptroller;

(B) shows payment of the tax imposed by Tax Code, §154.021 (Imposition and Rate of Tax); [and]

(C) is consecutively numbered and uniquely identifiable as a Texas cigarette tax stamp; and

(D) is not damaged beyond recognition as a valid Texas tax stamp.

(18) [(16)] Wholesaler--A person, including a manufacturer's representative, who sells or distributes cigarettes in this state for resale. A wholesaler is not a distributor.

(b) Permits required.

(1) To engage in business as a distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, or retailer, a person must apply for and receive the applicable permit from the comptroller. The permits are not transferable. A new application is required if a change in ownership occurs (sole ownership to partnership, sole ownership to corporation, partnership to limited liability company, etc.). Each legal entity must apply for its own permit(s). All permits issued to a legal entity will have the same taxpayer number. Tax Code, §154.501(a)(2) (Penalties), provides that a person who engages in the business of a bonded agent, distributor, importer, manufacturer, export warehouse, wholesaler, or retailer without a valid permit is subject to a penalty of not more than \$2,000 for each violation. Tax Code, §154.501(c), provides that a separate offense is committed each day on which a violation occurs.

(2) Each distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, or retailer shall obtain a permit for each place of business owned or operated by the distributor, importer, manufacturer, wholesaler, bonded agent, or retailer. A new permit shall be required for each physical change in the location of the place of business. Correction or change of street listing by a city, state, or U.S. Post Office shall not require a new permit so long as the physical location remains unchanged.

(3) Permits are valid for one place of business at the location shown on the permit. If the location houses more than one place of business under common ownership, an additional permit is required for each separate place of business. For example, each retailer who operates a cigarette vending machine shall place a retailer's permit on the machine.

(4) A vehicle from which cigarettes are sold is considered to be a place of business and requires a permit. A motor vehicle permit is issued to a bonded agent, distributor, or wholesaler holding a current permit. Vehicle permits are issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Vehicle permits may not be moved from one vehicle to another. No cigarette permit is required for a vehicle used only to deliver invoiced cigarettes.

(5) The comptroller may issue a combination permit for cigarettes, tobacco products, or cigarettes and tobacco products to a person who is a distributor, importer, manufacturer, wholesaler, bonded agent, or retailer as defined by Tax Code, Chapter 154 and Chapter 155 (Cigars and Tobacco Products Tax). A person who receives a combination permit pays only the higher of the two permit fees.

(6) The comptroller will not issue a permit for a residence or a unit in a public storage facility because cigarettes may not be stored at such places.

(7) This section does not apply to a research facility that possesses and only uses cigarettes for experimental purposes.

(8) A person who engages in the business of selling cigarettes for commercial purposes who provides a roll-your-own machine that is available for use by consumers must obtain a manufacturer's, distributor's and a retailer's permit.

(c) Sales and purchase requirements for permit holders. Except for retail sales to consumers, cigarettes may only be sold or distributed by and between permit holders as provided by this section. A permit holder may engage in the following business activities:

(1) A manufacturer outside this state who is not a permitted distributor may sell cigarettes only to a permitted distributor.

(2) A permitted distributor may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(3) A permitted importer may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(4) A permitted wholesaler may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(5) A permitted retailer may sell cigarettes only to the consumer and may purchase cigarettes only from a permitted distributor or wholesaler.

(6) A permitted export warehouse may sell cigarettes only to persons authorized to sell or consume unstamped cigarettes outside the United States.

(7) A manufacturer's representative may sell cigarettes only to a permitted distributor, wholesaler, or retailer.

(d) [(e)] Permit period.

(1) Bonded agent, distributor, importer, manufacturer, wholesaler, and motor vehicle permits expire on the last day of February of each year.

(2) Retailer permits expire on the last day of May of each even-numbered year.

(e) [(d)] Permit fees. An application for a bonded agent, distributor, [~~importer,~~] manufacturer, wholesaler, motor vehicle, or retailer permit must be accompanied by the appropriate fee.

(1) The permit fee for a bonded agent is \$300.

(2) The permit fee for a distributor is \$300.

(3) The permit fee for a manufacturer with representation in Texas is \$300.

(4) The permit fee for a wholesaler is \$200.

(5) The permit fee for a motor vehicle is \$15.

(6) The permit fee for a retailer permit [~~issued or renewed on or after September 1, 1999,~~] is \$180.

(7) No permit fee is required to obtain an importer or an export warehouse permit or to register a manufacturer if the manufacturer is located out of state with no representation in Texas [A \$50 fee is assessed in addition to the regular permit fee for failure to obtain a permit in a timely manner].

(8) A \$50 fee is assessed for failure to obtain a permit in a timely manner [No permit fee is required to obtain an importer permit or to register a manufacturer if the manufacturer is located out of state with no representation in Texas].

(9) The comptroller prorates the permit fee for new permits according to the number of months remaining in the permit period. If a permit will expire within three months of the date of issuance, the comptroller may collect the prorated permit fee for the current permit period and the total permit fee for the next permit period.

(10) A person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee [An unexpired permit may be returned to the comptroller for credit on the unexpired portion only upon the purchase of a permit of a higher classification].

(f) [(e)] Permit issuance, denial, suspension, or revocation.

(1) The comptroller shall issue a permit to a distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, or retailer if the comptroller receives an application and any applicable

fee, believes that the applicant has complied with Tax Code, §154.101, and determines that issuing the permit will not jeopardize the administration and enforcement of Tax Code, Chapter 154.

(2) If the comptroller determines that an existing permit should be suspended or revoked or a permit should be denied because of the applicant's prior conviction of a crime and the relationship of the crime to the license, the comptroller will notify the applicant or permittee in writing by personal service or by mail of the reasons for the denial, suspension, revocation, or disqualification, the review procedure provided by Occupations Code, §53.052 (Judicial Review), and the earliest date that the permit holder or applicant may appeal the denial, suspension, revocation, or disqualification.

(g) [(#)] Reports.

(1) Manufacturer reports must be filed on or before the 25th [last] day of each month for transactions that occurred during the preceding month.

(2) All cigarette distributor and wholesaler reports and payments must be filed on or before the 25th day of each month for transactions that occurred during the preceding month.

(3) All wholesaler and distributor reports of sales to retailers required by the comptroller under Tax Code, §154.212 (Reports by Wholesalers and Distributors of Cigarettes), shall be filed in accordance with §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

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 January 10, 2020.

TRD-202000082

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: February 23, 2020

For further information, please call: (512) 475-0387



SUBCHAPTER H. CIGAR AND TOBACCO

TAX

34 TAC §3.121

The Comptroller of Public Accounts proposes amendments to §3.121 concerning definitions, imposition of tax, permits, and reports. The amendments implement House Bill 3475, 86th Legislature, 2019, effective September 1, 2019. The comptroller adds definitions as described in Chapter 155, removes attached graphics related to tax rates for tobacco products other than cigars and provides the rate per ounce for each year in the text of the rule.

The comptroller amends subsection (a) to add definitions of commercial business location, engage in business, export warehouse, and raw tobacco as described in Chapter 155 and amended by HB 3475. The comptroller amends existing definitions in paragraphs (1) "bonded agent," (5) "distributor," (9) "first sale," (11) "manufacturer," (14) "permit holder," (17) "retailer," and (18) "tobacco product" to give the terms the meanings as

amended by HB 3475. The comptroller renumbers subsequent paragraphs accordingly.

The comptroller amends subsection (b) to remove the attached graphics and incorporate into the section language associated with the attached graphics concerning the tax rate per ounce on tobacco products other than cigars and include the tax rate per ounce for prior fiscal years. The comptroller amends paragraph (1)(B) to address the minimum rate of tax imposed on a can or package of a tobacco product that weighs 1.2 ounces.

The comptroller adds subsection (c) to outline sale and purchase requirements between permit holders based on revisions to Tax Code, §155.0415 (Sales: Permit Holders and Nonpermit Holders) from HB 3475. The comptroller reletters subsequent subsections accordingly.

The comptroller adds subsection (d) to address tax liability on transactions between permitted distributors. The language provides that a permitted distributor who makes a first sale to a permitted distributor in this state is liable for and shall pay the tax. This implements the provisions of HB 3475.

The comptroller amends subsection (e) to include a permit requirement for a person who engages in the business of an export warehouse. Consistent with provisions of HB 3475, as of September 1, 2019, a person who engages in the business of an export warehouse must apply for and receive a permit from the comptroller's office.

The comptroller adds export warehouse to subsection (f)(1) since the permit period of an export warehouse follows the same period as permits other than retailer permits.

The comptroller amends subsection (g) to address that there are no permit fees for obtaining a permit for an export warehouse and an importer, and to address permits for a business that closes prior to the permit expiration. The comptroller amends paragraphs (7) and (8) by reversing the order of the paragraphs so that fees for permit requirements are listed before a penalty for failure to obtain a permit. The comptroller amends paragraph (10) to address permits for a business that closes prior to the permit expiration.

The comptroller amends subsection (h) to add that the comptroller shall issue a permit upon receipt of an application and applicable fees from a person who intends to engage in business activities related to an export warehouse.

The comptroller amends subsection (j) to change the date a manufacturer must file a report from the end of the month to a date on or before the 25th of each month.

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 conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. The pro-

posed amendment would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic costs to the public.

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

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

The amendments implement Tax Code, §§155.001 (Definitions); 155.0212 (Liability of permitted distributors); 155.041 (Permits); 155.0415 (Sales: permit holder and nonpermit holders); and 155.049 (Permit year; fees).

§3.121. *Definitions, Imposition of Tax, Permits, and Reports.*

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

(1) Bonded agent--A person in Texas who is a third-party agent of for a manufacturer principal located outside of Texas and who receives cigars and tobacco products in interstate commerce and stores the cigars and tobacco products for distribution or delivery to distributors under orders from the manufacturer principal.

(2) Cigar--A roll of fermented tobacco that is wrapped in tobacco and that the main stream of smoke from which produces an alkaline reaction to litmus paper.

(3) Commercial business location--The entire premises occupied by a permit applicant or a person required to hold a permit under Tax Code, Chapter 155 (Cigar and Tobacco Product Tax). A commercial business location does not include a residence or a unit in a public storage facility.

(4) [(3)] Common carrier--A motor carrier registered under Transportation Code, Chapter 643 (Motor Carrier Registration), or a motor carrier operating under a certificate issued by the Interstate Commerce Commission or its successor agency.

(5) [(4)] Distributor--A person who:

(A) receives untaxed tobacco products from a manufacturer for the purpose of making a first sale in Texas;

(B) brings or causes to be brought into Texas untaxed tobacco products for sale, use, or consumption;[-]

(C) manufacturers or produces tobacco products; or

(D) is an importer.

(6) Engage in business--A person engaging either directly or through a representative, in any of the following activities:

(A) selling tobacco products in or into this state;

(B) using a warehouse or another location to store tobacco products; or

(C) otherwise conducting through a physical presence tobacco product-related business in this state.

(7) Export warehouse--A person in this state who receives untaxed tobacco products from manufacturers and stores the tobacco products for the purpose of making sales to authorized persons for resale, use, or consumption outside the United States.

(8) [(5)] Factory list price--The published manufacturer gross cost to the distributor. The term is synonymous with manufacturer's list price.

(9) [(6)] First sale--Except as otherwise provided by this section, the term means[-]

[(A)] the first transfer of possession in connection with a purchase, sale, or any exchange for value of tobacco products in or into this state, which includes: [intrastate commerce;]

(A) the sale of tobacco products by a distributor in or outside this state to a distributor, wholesaler, or retailer in this state; and a manufacturer in this state who transfers the tobacco products in this state; and does not include:

(i) the sale of tobacco products by a manufacturer outside this state to a distributor in this state; or

(ii) the transfer of tobacco products from a manufacturer outside this state to a bonded agent in this state;

(B) the first use or consumption of tobacco products in this state; or

(C) the loss of tobacco products in this state whether through negligence, theft, or other loss.

(10) [(7)] Importer--A person who ships, transports, or imports into Texas tobacco products manufactured or produced outside the United States for the purpose of making a first sale in this state.

(11) [(8)] Manufacturer--A person who manufactures, fabricates, or assembles tobacco products, or causes or arranges for the manufacture, fabrication, or assembly of tobacco products, for sale or distribution [or produces tobacco products and sells tobacco products to a distributor].

(12) [(9)] Manufacturer's representative--A person who is employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

(13) [(10)] Manufacturer's listed net weight--For the purposes of calculating and reporting the state excise tax due on tobacco products other than cigars, the taxable net weight for a tobacco product is the weight of the finished product as shown or listed by the product manufacturer on the product can, package, shipping container, or the report required by Tax Code, §155.103(b) (Manufacturer's Records and Reports).

(14) [(11)] Permit holder--A bonded agent, distributor, importer, export warehouse, manufacturer, wholesaler, or retailer who obtains [required to obtain] a permit under Tax Code, §155.041 (Permits).

(15) [(12)] Place of business--[the term means:]

(A) a commercial business location where tobacco products are sold;

(B) a commercial business location where tobacco products are kept for sale or consumption or otherwise stored and may not be a residence or a unit in a public storage facility; [or]

(C) a vehicle from which tobacco products are sold; or[-]

(D) a vending machine from which tobacco products are sold.

(16) Raw tobacco--Any part of the tobacco plant, including the tobacco leaf or stem, that is harvested from the ground and is not a tobacco product as the term is defined in this section.

(17) [(43)] Retailer--A person who engages in the business [practice] of selling tobacco products to consumers and includes the owner of a [coin-operated] vending machine.

(18) [(44)] Tobacco product--A tobacco product is [includes]:

(A) a cigar; [pipe tobacco, including any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe;]

(B) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco substitute for smoking in a pipe or as a cigarette;

(C) chewing tobacco, including, Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing;[and that is not intended to be smoked; snuff or other preparations of finely cut, ground, powdered, pulverized or dissolvable tobacco that is not intended to be smoked; roll-your-own smoking tobacco, including granulated, plug-cut, crimp-cut, ready rubbed, any form of tobacco, which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars, or use as wrappers thereof; or other tobacco products, including an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.]

(D) snuff or other preparations of pulverized tobacco;
or

(E) an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette or an e-cigarette as defined by Health and Safety Code, §161.081 (Definitions).

(19) [(45)] Trade discount, special discount, or deals--Includes promotional incentive discounts, quantity purchase incentive discounts, and timely payment or prepayment discounts.

(20) [(46)] Weight of a cigar--The combined weight of tobacco and nontobacco ingredients that make up the total product in the form available for sale to the consumer, excluding any carton, box, label, or other packaging materials.

(21) [(47)] Wholesaler--A person, including a manufacturer's representative, who sells or distributes tobacco products in this state for resale but who is not a distributor.

(b) Imposition of tax. A tax is imposed and becomes due and payable when a permit holder receives cigars or tobacco products for the purpose of making a first sale in this state.

(1) Tax Rates.

(A) the tax on cigars is calculated at:

(i) \$0.1 per 10 or fraction of 10 on cigars that weigh three pounds or less per thousand;

(ii) \$7.50 per thousand on cigars that weigh more than three pounds per thousand and that are sold at factory list price, exclusive of any trade discount, special discount, or deal, for 3.3 cents or less each;

(iii) \$11 per thousand on cigars that weigh more than three pounds per thousand and that are sold at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3

cents each, and that contain no substantial amount of nontobacco ingredients; and

(iv) \$15 per thousand on cigars that weigh more than three pounds per thousand and that are sold at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each, and that contain a substantial amount of nontobacco ingredients.

(B) The tax for tobacco products, other than cigars, is based on the manufacturer's listed net weight for an individual product's can or package and a rate for each ounce and proportionate rate on all fractional parts of an ounce of weight for that product. The tax imposed on a can or package of a tobacco product that weighs less than 1.2 ounces is equal to the amount of the tax imposed on a can or package that weighs 1.2 ounces. The rates imposed for state fiscal years 2010, 2011, 2012, 2013, 2014, and thereafter are set forth in this subparagraph. An expanded chart showing rates for cans or packages greater than 1.2 [two] ounces is available at comptroller.texas.gov.

(i) The rate for the state Fiscal Year 2010 (September 1, 2009 through August 31, 2010), is \$1.10 per ounce plus the [and a] proportionate rate on all fractional parts of an ounce [for up to two ounces according to the following].
[Figure: 34 TAC §3.101(b)(1)(B)(i)]

(ii) The rate for [For] the state Fiscal Year 2011 (September 1, 2010 through August 31, 2011), is \$1.13 per ounce plus the [tax rate and] proportionate [tax] rate on all [for] fractional parts of an ounce [for up to two ounces are as follows].
[Figure: 34 TAC §3.101(b)(1)(B)(ii)]

(iii) The rate for [For] the state Fiscal Year 2012 (September 1, 2011 through August 31, 2012), is \$1.16 per ounce plus the [tax rate and] proportionate [tax] rate on all [for] fractional parts of an ounce [for up to two ounces are as follows].
[Figure: 34 TAC §3.101(b)(1)(B)(iii)]

(iv) The rate for [For] the state Fiscal Year 2013 (September 1, 2012 through August 31, 2013), is \$1.19 per ounce plus the [tax rate and] proportionate [tax] rate on all [for] fractional parts of an ounce [for up to two ounces are as follows].
[Figure: 34 TAC §3.101(b)(1)(B)(iv)]

(v) The rate for [For] state Fiscal Year 2014 (which begins September 1, 2013) and for each fiscal year thereafter, is \$1.22 per ounce plus the [tax rate and] proportionate [tax] rate on all [for] fractional parts of an ounce [for up to two ounces are as follows].
[Figure: 34 TAC §3.101(b)(1)(B)(v)]

(C) The tax imposed on a unit that contains multiple individual cans or packages is the sum of the taxes imposed under paragraph (1)(B) of this subsection, on each individual can or package intended for sale or distribution at retail. For example, on November 1, 2009 (Fiscal Year 2010) a distributor receives from a manufacturer for the purpose of making a first sale in Texas a unit of snuff that consists of 10 individual cans. Each can weighs 1.3 ounces. The effective tax rate for each can is \$1.43. The total tax due for the unit is calculated by multiplying the effective tax rate on each individual can (\$1.43) by the total number of individual cans in the unit (10 cans), for a total tax due of \$14.30.

(2) Free goods shall be taxed at the prevailing factory list price, except that each tobacco product other than cigars shall be taxed according to the manufacturer's listed net weight for the product and the applicable fiscal year rate for each ounce and proportionate rate for all fractional parts of an ounce according to paragraph (1)(B) of this subsection.

(3) A person who receives or possesses tobacco products on which a tax of more than \$50 would be due is presumed to receive or possess the tobacco products for the purpose of making a first sale in this state. This presumption does not apply to common carriers or to manufacturers.

(4) A tax is imposed on manufacturers, who manufacture tobacco products in this state, at the time the tobacco products are first transferred in connection with a purchase, sale, or any exchange for value in intrastate commerce.

(5) The delivery of tobacco products by a principal to its bonded agent in this state is not a first sale.

(6) If a manufacturer sells tobacco products to a purchaser in Texas and ships the products at the purchaser's request to a third party distributor in Texas, then the purchaser has received the tobacco products for first sale in Texas.

(7) The person in possession of cigars or tobacco products has the burden to prove payment of the tax.

(c) Sales and purchase requirements for permit holders. Except for retail sales to consumers, cigarettes may only be sold or distributed by and between permit holders as provided by this section. A permit holder may engage in the following business activities:

(1) A manufacturer outside this state who is not a permitted distributor may sell tobacco products only to a permitted distributor.

(2) A permitted distributor may sell tobacco products only to a permitted distributor, wholesaler, or retailer.

(3) A permitted importer may sell tobacco products only to a permitted distributor, wholesaler, or retailer.

(4) A permitted wholesaler may sell tobacco products only to a permitted distributor, wholesaler, or retailer.

(5) A permitted retailer may sell tobacco products only to the consumer and may purchase tobacco products only from a permitted distributor or wholesaler.

(6) A permitted export warehouse may sell tobacco products only to persons authorized to sell or consume untaxed tobacco products outside the United States.

(7) A manufacturer's representative may sell tobacco products only to a permitted distributor, wholesaler, or retailer.

(d) Liability of a permitted distributor. A permitted distributor who makes a first sale to a permitted distributor in this state is liable for and shall pay the tax.

(e) [(e)] Permits required. To engage in business as a distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, or retailer a person must apply for and receive the applicable permit from the comptroller. The permits are not transferable.

(1) A person who engages in the business of a bonded agent, distributor, importer, manufacturer, export warehouse, wholesaler, or retailer without a valid permit is subject to a penalty of not more than \$2,000 for each violation. Each day on which a violation occurs is a separate offense. A new application is required if a change in ownership occurs (sole ownership to partnership, sole ownership to corporation, partnership to limited liability company, etc.). Each legal entity must apply for its own permit(s). All permits issued to a legal entity will have the same taxpayer number.

(2) Each distributor, importer, manufacturer, wholesaler, bonded agent, export warehouse, or retailer shall obtain a permit for each place of business owned or operated by the distributor, importer,

manufacturer, wholesaler, bonded agent, or retailer. A new permit shall be required for each physical change in the location of the place of business. Correction or change of street listing by a city, state, or U.S. Post Office shall not require a new permit so long as the physical location remains unchanged.

(3) Permits are valid for one place of business at the location shown on the permit. If the location houses more than one place of business under common ownership, an additional permit is required for each separate place of business. For example, a retailer must have a separate permit for each vending machine including several machines at one location.

(4) A vehicle from which cigars and tobacco products are sold is a place of business and requires a permit. A motor vehicle permit is issued to a bonded agent, retailer, distributor, or wholesaler holding a current permit. Vehicle permits are issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Vehicle permits may not be moved from one vehicle to another. Each cigar or tobacco product manufacturer's sales representative is required to purchase a wholesale dealer's permit for each manufacturer's vehicle operated. No cigar and tobacco product permit is required for a vehicle used only to deliver invoiced tobacco products.

(5) The comptroller may issue a combination permit for cigarettes, tobacco products, or cigarettes and tobacco products to a person who is a distributor, importer, manufacturer, wholesaler, bonded agent, or retailer as defined by Tax Code, Chapter 154 (Cigarette Tax) and Chapter 155 (Cigars and Tobacco Products Tax). A person who receives a combination permit pays only the higher of the two permit fees.

(6) The comptroller will not issue permits for a residence or a unit in a public storage facility because tobacco products cannot be stored at such places.

(f) [(4)] Permit Period.

(1) Bonded agent, distributor, export warehouse, importer, manufacturer, wholesaler, and motor vehicle permits expire on the last day of February of each year.

(2) Retailer permits expire on the last day of May of each even-numbered year.

(g) [(e)] Permit Fees. An application for a bonded agent, distributor, [importer] manufacturer, wholesaler, motor vehicle, or retailer permit must be accompanied by the required fee.

(1) The permit fee for a bonded agent is \$300.

(2) The permit fee for a distributor is \$300.

(3) The permit fee for a manufacturer with representation in Texas is \$300.

(4) The permit fee for a wholesaler is \$200.

(5) The permit fee for a motor vehicle is \$15.

(6) The permit fee for a retailer permit issued or renewed is \$180. Retailers who fail to obtain or renew a retailer permit in a timely manner are liable for the fee in effect for the applicable permit period, in addition to the fee described in paragraph (8) [(7)] of this subsection.

(7) No permit fee is required to obtain an importer permit, export warehouse, or to register a manufacturer when the manufacturer is located out of state with no representation in Texas [A \$50 fee is assessed, in addition to the regular permit fee, for failure to obtain or renew a permit in a timely manner].

(8) A \$50 fee is assessed for failure to obtain or renew a permit in a timely manner [No permit fee is required to obtain an importer permit or to register a manufacturer when the manufacturer is located out of state with no representation in Texas].

(9) The comptroller prorates the permit fee for new permits according to the number of months remaining in the permit period. If a permit will expire within three months of the date of issuance, the comptroller may collect the prorated permit fee for the current permit period and the total permit fee for the next permit period.

(10) A person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee [An unexpired permit may be returned to the comptroller for credit on the unexpired portion only upon the purchase of a permit of a higher classification].

(h) ~~[(f)]~~ Permit issuance, denial, suspension, or revocation.

(1) The comptroller shall issue a permit to a distributor, importer, manufacturer, export warehouse, wholesaler, bonded agent, or retailer if the comptroller has received an application and any applicable fee, the applicant has complied with Tax Code, §155.041, and the comptroller determines that the issuance of such permit will not jeopardize the administration and enforcement of Tax Code, Chapter 155.

(2) If the comptroller determines that an existing permit should be suspended or revoked or a permit should be denied, after notice and opportunity for hearing, because the applicant has failed to disclose any information required by Tax Code, §155.041(d), (e), and (f), including the applicant's prior conviction of a crime and the relationship of the crime to the license, the comptroller will notify the applicant or permittee in writing by personal service or by mail of the reasons for the denial, suspension, revocation, or disqualification, the review procedure provided by Occupations Code, §53.052 (Judicial Review), and the earliest date that the permit holder or applicant may appeal the denial, suspension, revocation, or disqualification.

(i) ~~[(g)]~~ Sale and delivery of tax-free cigars and tobacco products to the United States government.

(1) Distributors may use their own vehicles to deliver previously invoiced quantities of tax-free cigars and tobacco products to instrumentalities of the United States government. These tax-free products must be packaged in a manner in which they will not commingle with any other cigars or tobacco products.

(2) Each sale of tax-free cigars and tobacco products by a distributor to an instrumentality of the United States government shall be supported by a separate sales invoice and a properly completed Texas Certificate of Tax Exempt Sale, Form 69-302. Sales invoices must be numbered and dated and must show the name of the seller, name of the purchaser, and the destination.

(j) ~~[(h)]~~ Reports.

(1) Manufacturer reports must be filed on or before the 25th ~~last~~ day of each month for transactions that occurred during the preceding month.

(2) All tobacco distributor and wholesaler reports and payments must be filed on or before the 25th day of each month for transactions that occurred during the preceding month.

(3) All wholesaler and distributor reports of sales to retailers required by the comptroller under Tax Code, §155.105 (Reports by Wholesalers and Distributors of Cigars and Tobacco Products), shall be filed in accordance with §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

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

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For further information, please call: (512) 475-0387



SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.441

The Comptroller of Public Accounts proposes amendments to §3.441, concerning documentation of imports and exports, import verification numbers, export sales, and diversion numbers. The amendments implement Senate Bill 1557, 85th Legislature, 2017, House Bill 3954, 86th Legislature, 2019, and update the section by modernizing and removing obsolete references. The comptroller proposes the amendments to address motor fuel storage facilities that are part of the bulk transfer system; exports and movements of gasoline and diesel fuel by marine vessels; and address subsequent sales within Texas of tax-free gasoline and diesel fuel purchased for export.

The comptroller amends subsection (a) to delete the current text addressing application to transactions that occurred prior to January 1, 2004, because a reference to a date so far into the past is unnecessary. Subsection (a), as amended, now includes definitions found in Tax Code, §162.001 (Definitions), for terms used but not previously defined in this section. We give the terms the meanings assigned by Tax Code, §162.001 (Definitions).

The comptroller amends subsections (b) and (c) to replace the term "motor fuel" with "gasoline or diesel fuel." Motor fuel consists of several different fuel types and the amendment specifies that gasoline and diesel fuel are the two fuel types subject to the requirements for reporting subsequent sales in this state of tax-free fuel purchased for export. The comptroller amends subsection (b) and (c) to remove titles of the paragraphs, and subsection (c) to update the title. The comptroller also corrects formatting in subsection (c)(3).

New subsection (e) addresses reporting requirements for subsequent sales in this state of tax-free gasoline or diesel fuel purchased for export. See Tax Code, §162.1155 (Duty to Report Subsequent Sales of Tax-Free Gasoline Purchased for Export), and Tax Code, §162.2165 (Duty to Report Subsequent Sales of Tax-Free Diesel Fuel Purchased for Export).

New subsection (f) addresses penalties related to the reporting requirements for subsequent sales in this state of tax-free gasoline and diesel fuel purchased for export. See Tax Code, §162.401(e) and (f) (Failure to Pay Tax or File Report).

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 conforming the rule to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amendment would have no fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

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

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

The amendment implements Tax Code, §§162.001 (Definitions), 162.016 (Importation and Exportation of Motor Fuel), 162.1155 (Duty to Report Subsequent Sales of Tax-Free Gasoline Purchased for Export), and 162.2165 (Duty to Report Subsequent Sales of Tax-Free Diesel Fuel Purchased for Export).

§3.441. *Documentation of Imports and Exports, Import Verification Numbers, Export Sales, and Diversion Numbers.*

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

(1) Bulk plant--A motor fuel storage and distribution facility that:

(A) is not an Internal Revenue Service-approved (IRS-approved) terminal; and

(B) from which motor fuel may be removed at a rack.

(2) Bulk transfer/terminal system--The motor fuel distribution system consisting of refineries, pipelines, marine vessels, motor fuel storage facilities, and IRS-approved terminals.

(A) Motor fuel is in the bulk transfer/terminal system if the motor fuel is in a refinery, a pipeline, a motor fuel storage facility, a terminal, or a marine vessel transporting motor fuel owned by a licensed supplier or permissive supplier.

(B) Motor fuel is not in the bulk transfer/terminal system if the motor fuel is in:

(i) a bulk plant that is not part of a refinery or terminal;

(ii) the motor fuel supply tank of an engine or a motor vehicle; or

(iii) a tank car, railcar, trailer, truck, or other equipment suitable for ground transportation.

(3) Diesel fuel--Kerosene or another liquid, or a combination of liquids blended together, offered for sale, sold, used, or capable of use as fuel for the propulsion of a diesel-powered engine.

(A) The term includes products commonly referred to as kerosene, light cycle oil, #1 diesel fuel, #2 diesel fuel, dyed or undyed diesel fuel, aviation jet fuel, renewable diesel, biodiesel, distillate fuel, cutter stock, or heating oil.

(B) The term does not include compressed natural gas, liquefied natural gas, gasoline, aviation gasoline, or liquefied gas.

(4) Distributor--A person who makes sales of motor fuel at wholesale. A distributor's activities may also include sales of motor fuel at retail.

(5) Diversion number--The number assigned by the comptroller, or by a person to whom the comptroller delegates or appoints the authority to assign the number, that relates to a single cargo tank delivery of motor fuel that is diverted from the original destination state printed on the shipping document.

(6) Export--To obtain motor fuel in this state for sale or use in another state, territory, or foreign country.

(7) Exporter--A person who exports motor fuel from this state. The seller is the exporter of motor fuel delivered out of this state by or for the seller, and the purchaser is the exporter of motor fuel delivered out of this state by or for the purchaser.

(8) Gasoline--Any liquid or combination of liquids blended together, offered for sale, sold, used, or capable of use as fuel for a gasoline-powered engine.

(A) The term includes gasohol, aviation gasoline, and blending agents.

(B) The term does not include compressed natural gas, liquefied natural gas, racing gasoline, diesel fuel, aviation jet fuel, or liquefied gas.

(9) Import--To bring motor fuel into this state by motor vehicle, marine vessel, pipeline, or any other means. The term does not include bringing motor fuel into this state in the motor fuel supply tank of a motor vehicle if the motor is used to power that motor vehicle.

(10) Import verification number--The number assigned by the comptroller, or by a person to whom the comptroller delegates or appoints the authority to assign the number, that relates to a single cargo tank delivery into this state from another state after a request for an assigned number by an importer or by the motor fuel transporter carrying taxable motor fuel into this state for the account of an importer.

(11) Importer--A person that imports motor fuel into this state. The seller is the importer for motor fuel delivered into this state from outside of this state by or for the seller, and the purchaser is the importer for motor fuel delivered into this state from outside of this state by or for the purchaser.

(12) Marine vessel--Includes a marine barge.

(13) Motor fuel--Gasoline, diesel fuel, gasoline blended fuel, compressed natural gas, liquefied natural gas, and other products that are offered for sale, sold, used, or capable of use as fuel for a gasoline-powered engine or a diesel-powered engine.

(14) Motor fuel storage facility--A storage facility supplied by pipeline or marine vessel that does not have a rack for removal of motor fuel by truck, railcar, or any other means of conveyance that is outside the bulk transfer/terminal system.

(15) Permissive supplier--A person who elects, but is not required, to have a supplier's license and who is registered under Internal Revenue Code, §4101, for transactions in motor fuel in the bulk transfer/terminal system and is a position holder in motor fuel located only in another state or a person who receives motor fuel only in another state under a two-party exchange.

(16) Position holder--The person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for motor fuel at the terminal. The term includes a terminal operator who owns motor fuel in the terminal.

(17) Rack--A mechanism for delivering motor fuel from a refinery, terminal, marine vessel, or bulk plant into a transport vehicle, railroad tank car, or other means of transfer that is outside the bulk transfer/terminal system.

(18) Sale--A transfer of title, exchange, or barter of motor fuel, other than the transfer of possession of motor fuel on consignment.

(19) Shipping document--A delivery document issued in conjunction with the sale, transfer, or transport of motor fuel. A shipping document issued by a terminal operator shall be machine printed. All other shipping documents shall be typed or handwritten on a preprinted form or machine printed.

(20) Supplier--A person subject to the general taxing jurisdiction of this state who:

(A) is registered under Internal Revenue Code, §4101, for transactions in motor fuel in the bulk transfer/terminal system; and

(i) is a position holder in motor fuel in a terminal or refinery in this state and may concurrently be a position holder in motor fuel in another state;

(ii) owns motor fuel in a marine vessel in this state;
or

(iii) receives motor fuel in this state under a two-party exchange; and

(B) may also be a terminal operator, provided that a terminal operator is not considered to also be a "supplier" based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal.

(21) Terminal--An IRS-approved motor fuel storage and distribution facility to which a terminal control number has been assigned, to which motor fuel is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.

~~{(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.}~~

(b) Imports.

(1) Gasoline or diesel [~~Imports. Motor~~] fuel imported into Texas by or for a seller constitutes an import by that seller. Gasoline or diesel [~~Motor~~] fuel imported into Texas by or for a purchaser constitutes an import by that purchaser.

(2) [~~Import Verification Number.~~] An importer must obtain from the comptroller an import verification number for each load of gasoline or diesel fuel imported into Texas by truck or railroad tank car. An import verification number must be obtained within 72 hours before or after the gasoline or diesel fuel enters Texas. The importer

must write the import verification number on the shipping document issued for that fuel.

(3) [~~Documentation.~~] An importer must possess a shipping document created by the terminal or bulk plant where the gasoline or diesel fuel was loaded. See [~~see~~] §3.439 of this title (relating to Motor Fuel Transportation Documents) for gasoline or diesel [~~motor~~] fuel imported by any means into Texas[)].

(c) Exports [~~Export Sales.~~].

(1) A licensed supplier, permissive supplier, or distributor makes an export sale when it sells gasoline or diesel [~~motor~~] fuel in Texas to a licensed exporter, importer, distributor, supplier, or permissive supplier who then[; prior to any other sale or use in Texas,] sends or transports the gasoline or diesel [~~motor~~] fuel outside the state. The bill of lading or shipping document must list the out of state destination.

(2) A licensed supplier, permissive supplier, or distributor who makes an export sale will not be liable for tax on gasoline or diesel [~~motor~~] fuel that the purchaser diverts provided that the seller issued a bill of lading or shipping document that shows that the gasoline or diesel fuel is to be delivered to a destination outside Texas.

(3) [~~Documentation.~~]

[(A)] The comptroller may request proof of export from the exporter to verify that the gasoline or diesel[~~motor~~] fuel was exported from Texas. This proof may consist of:

(A) [~~(B)~~] proof of export that a U.S. customs office has certified, if the gasoline or diesel fuel was exported from this state to a foreign country;

(B) [~~(C)~~] proof of export that a port of entry of the state of importation has certified, if ports of entry are maintained by that state;

(C) [~~(D)~~] proof from the tax officials of the state into which the gasoline or diesel [~~motor~~] fuel was imported, which shows that the exporter has accounted for the gasoline or diesel [~~motor~~] fuel on the state's tax report; or

(D) [~~(E)~~] other proof that the gasoline or diesel fuel has been reported to the state into which the gasoline or diesel [~~motor~~] fuel was imported.

(d) Diversion Number. An importer or exporter who diverts the delivery of a load of gasoline or diesel fuel being transported by truck or railroad tank car from the destination state or country that is preprinted on the shipping document that has been issued for that fuel to another state or country must obtain a diversion number from the comptroller. A diversion number must be obtained within 72 hours before or after the diversion. The importer, exporter, or common or contract carrier must write the diversion number on the shipping document issued for that fuel.

(e) Reporting subsequent sales in this state of tax-free gasoline or diesel fuel purchased for export.

(1) A person who purchases or removes gasoline or diesel fuel tax-free for export to any other state or foreign country and, before export, sells the gasoline or diesel fuel in this state tax-free to a licensed supplier, permissive supplier, distributor, importer, or exporter shall report that transaction as required by this subsection.

(2) If the gasoline or diesel fuel is subsequently sold one or more times in this state before export and tax-free to a licensed supplier, permissive supplier, distributor, importer, or exporter, each seller shall report the transaction to the comptroller as required by this section.

(3) Each person who makes a sale described by paragraph (1) or (2) of this subsection must provide to the comptroller:

(A) the bill of lading number issued at the terminal;

(B) the terminal control number;

(C) the date the gasoline or diesel fuel was removed from the terminal;

(D) the number of gallons invoiced;

(E) date of sale; and

(F) any other information required by the comptroller.

(4) The sales invoice for each transaction described by paragraph (1) or (2) of this subsection must include:

(A) the name of the seller and purchaser; and

(B) the original bill of lading number.

(5) A person who is required to report a subsequent sale in this state of tax-free gasoline or diesel fuel purchased for export shall report the transaction with the required monthly motor fuels return as required under Tax Code, §162.114 (Returns and Payments) or §162.215 (Returns and Payments).

(f) Penalties.

(1) A person who fails to report a subsequent sale in this state of tax-free gasoline or diesel fuel purchased for export shall pay a penalty of \$200 for each sale that was not reported on the original return, unless the person files an amended report that includes the sale not later than the 180th day after the due date of the original return.

(2) Failure to pay tax due on a subsequent sale of tax-free gasoline and diesel fuel purchased for export. A licensed supplier, permissive supplier, distributor, importer, or exporter who redirects a delivery of gasoline or diesel fuel to a location in this state prior to export and fails to pay the tax when due, shall pay a penalty equal to the greater of \$2,000 or five times the amount of tax due.

(3) The penalties addressed in this subsection are in addition to any other penalty authorized under Tax Code, Chapter 162 (Motor Fuel Taxes).

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

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



SUBCHAPTER HH. MIXED BEVERAGE TAXES

34 TAC §3.1002

The Comptroller of Public Accounts proposes amendments to §3.1002, concerning reporting periods for mixed beverage sales tax. The comptroller proposes to amend the section to reflect the

changes in Tax Code, §183.0421 (Tax Return Due Date) and §183.0422 (Payment) made by House Bill 3006, 86th Legislature, 2019, effective October 1, 2019.

The comptroller adds subsection (c)(1)(C) to indicate that the confidentiality provisions of Tax Code, Chapter 151 do not apply to reports filed by certain permittees.

The comptroller amends subsection (c)(5) to correct the name of §3.302 of this title.

The comptroller amends subsection (i) to implement House Bill 3006, which eliminated quarterly filing of mixed beverage sales tax reports. The comptroller amends the title of subsection (i) to monthly mixed beverages sales tax reports and to provide that mixed beverage sales tax reports are due monthly. The comptroller also amends the subsection to include provisions in existing paragraphs (1), (2), and (3) relating to reports due on week-ends and holidays and relating to filing reports even if no sales of alcoholic beverages were made in a month. Those paragraphs are subsequently deleted.

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 conforming the rule to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. 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.

The amendment implements Tax Code, §183.0421 (Tax Return Due Date) and §183.0422 (Payment).

§3.1002. *Mixed Beverage Sales Tax.*

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

(1) Alcoholic beverage--This term has the same meaning as assigned by §3.1001 of this title (relating to Mixed Beverage Gross Receipts Tax).

(2) Complimentary alcoholic beverage--This term has the same meaning as assigned by §3.1001 of this title.

(3) Governmental entity--An organization that is exempted from sales and use tax otherwise imposed on their purchases under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Taxes), by operation of Tax Code, §151.309 (Governmental Entities).

(4) Nonprofit organization--An organization that is exempted from the sales and use tax imposed under Tax Code, Chapter 151, by operation of Tax Code, §151.310(a) (Religious, Educational, and Public Service Organizations).

(5) Permittee--This term has the same meaning as assigned by §3.1001 of this title.

(b) Mixed beverage sales tax. A tax at a rate of 8.25% is imposed on each alcoholic beverage sold, prepared, or served by a permittee, and on ice and each nonalcoholic beverage sold, prepared, or served by a permittee to be mixed with alcohol and consumed on the permittee's premises. The sales price of each item on which mixed beverage sales tax is imposed includes, but is not limited to, those items identified in §3.1001(c) of this title. Those items identified in §3.1001(f)(1) - (7) of this title are excluded from the sales price of items on which mixed beverage sales tax is imposed. Mixed beverage sales tax is imposed in addition to the mixed beverage gross receipts tax imposed under Tax Code, Chapter 183, Subchapter B.

(c) Administration, collection, and enforcement of mixed beverage sales tax.

(1) Except as otherwise provided in this paragraph, mixed beverage sales tax is administered, collected, and enforced in the same manner as sales and use tax is administered, collected, and enforced in Tax Code, Chapter 151, except:

(A) a permittee may not deduct or withhold any amount of taxes collected as reimbursement for the cost of collecting the tax, pursuant to Tax Code, §151.423 (Reimbursement to Taxpayer for Tax Collection); and

(B) a permittee may not receive a discount for prepaying the tax, pursuant to Tax Code, §151.424 (Discount for Prepayments).

(C) any record, report or other instrument required to be filed by a permittee is not confidential under Tax Code §151.027(a) (Confidentiality of Tax Information).

(2) Tax due is debt of the purchaser. Mixed beverage sales tax is a debt of the purchaser to the permittee until collected.

(3) Tax-included sales price. The total amount shown on a customer's sales invoice, billing, service check, ticket, or other receipt for sales that are subject to mixed beverage sales tax is presumed to be the sales price, without tax included. Contracts, bills, invoices, or other receipts that merely state that "all taxes" are included are not sufficient to relieve either the customer or the permittee of their tax responsibilities on the transaction. The permittee may overcome the presumption by using the permittee's records to show that tax was included in the sales price.

(4) Record-keeping requirements. Permittees are responsible for creating and maintaining records of purchases and sales as required by §3.1001(j) - (m) and (o) of this title.

(5) Bad debts. The exclusion of bad debts from the mixed beverage gross receipts tax base, as established in §3.1001(n) of this title, does not apply to mixed beverage sales tax. Bad debt deductions from mixed beverage sales tax are treated in the same manner as bad debt deductions from sales tax. For more information on bad debt deductions from sales tax, refer to §3.302 of this title (relating to

Accounting Methods, Credit Sales, Bad Debt Deductions [Refunds], Repossession [Refunds], Interest on Sales Tax, and Trade-Ins).

(d) Separate tax disclosure statement.

(1) A permittee may include on a customer's sales invoice, billing, service check, ticket, or other receipt that includes an item subject to mixed beverage sales tax:

(A) a statement that mixed beverage sales tax is included in the sales price;

(B) a separate statement of the amount of mixed beverage gross receipts tax to be paid by the permittee on that sale;

(C) a separate statement of the amount of mixed beverage sales tax imposed on that item;

(D) a statement of the combined amount of mixed beverage gross receipts tax and mixed beverage sales tax to be paid on that item; or

(E) a statement of the combined amount of mixed beverage sales tax and sales and use tax imposed under Tax Code, Chapter 151, to be paid on all items listed on that sales invoice, billing, service check, ticket, or other receipt.

(2) Mixed beverage gross receipts tax cannot be charged to or paid by the customer. A receipt with a statement of the combined amount of mixed beverage gross receipts tax and mixed beverage sales tax provided in paragraph (1)(D) of this subsection must clearly show that the customer is not being charged mixed beverage gross receipts tax.

(3) For each receipt with a statement of the combined amount of mixed beverage sales tax and sales and use tax, as provided in paragraph (1)(E) of this subsection, the permittee's books and records must clearly show the amount of mixed beverage sales tax and sales and use tax on each sale of alcohol.

(4) Examples of disclosure of tax statements.
Figure: 34 TAC §3.1002(d)(4) (No change.)

(e) Complimentary beverages. A permittee owes sales and use tax, as imposed by Tax Code, Chapter 151, on the purchase of alcoholic beverages, ice, and nonalcoholic beverages that are ingredients of a complimentary alcoholic beverage or that are served or provided by the permittee, without any consideration from the customer, to be mixed with a complimentary alcoholic beverage and consumed on the permittee's premises. The permittee also owes sales and use tax on taxable items that are furnished with a complimentary alcoholic beverage, such as napkins and straws.

(f) Exemptions; governmental entities; nonprofit organizations; university and student organizations; volunteer fire departments; temporary permit.

(1) Governmental entity exempt on purchase of alcohol. A governmental entity can claim an exemption from mixed beverage sales tax on the purchase of alcohol in the same manner as a governmental entity can claim exemption from the payment of sales and use tax on the purchase of alcohol under Tax Code, §151.309.

(2) Purchase of alcohol by nonprofit organization not exempt. A nonprofit organization cannot claim an exemption from the mixed beverage sales tax on the purchase of alcohol. In addition, except as provided in this subsection, a nonprofit organization is responsible for collecting mixed beverage sales tax on the sale, preparation, or service of alcoholic beverages to the same extent that the organization is responsible for paying mixed beverage gross receipts tax on such beverages. For more information, refer to §3.1001(e) of this title.

(3) Nonprofit organizations; fundraising events.

(A) The sale, preparation, or service of alcohol is exempt from mixed beverage sales tax when sold by a nonprofit organization that qualifies for exemption from sales and use tax under Tax Code, §151.310(a)(1) or (2) during a qualifying fundraising sale or auction authorized by Tax Code, §151.310(c).

(B) Except as provided in subparagraph (A) of this paragraph, the sale, preparation, or service of alcohol by a nonprofit organization that qualifies for exemption from sales and use tax under Tax Code, §151.310(a)(1) or (2) is computed in the same manner as mixed beverage gross receipts tax is computed in §3.1001(e) of this title.

(4) University and college student organizations. The sale, preparation, or service of alcohol is exempt from mixed beverage sales tax when sold by a university or college student organization that is certified as an affiliated organization by a university or college as defined in Education Code, §61.003 (Definitions) during a sale authorized by Tax Code, §151.321 (University and College Student Organizations).

(5) Volunteer fire departments; fundraising events. The sale, preparation, or service of alcohol is exempt from mixed beverage sales tax when sold by a volunteer fire department that qualifies for exemption from sales and use tax under Tax Code, §151.310(a)(4) during a qualifying fundraising sale or auction authorized by Tax Code, §151.310(c-1). This exemption is effective May 28, 2015. A previous exemption from mixed beverage sales tax on the sale, preparation, or service of alcohol when sold by volunteer fire departments at fundraising events expired on September 1, 2014.

(6) Temporary mixed beverage permit required. Nonprofit organizations, university or college student organizations, and volunteer fire departments must hold a daily temporary mixed beverage permit or daily temporary private club permit, issued by the Texas Alcoholic Beverage Commission, in order to sell alcoholic beverages and claim an exemption from mixed beverage sales tax on those sales pursuant to paragraphs (3) - (5) of this subsection.

(7) Governmental entities and nonprofit organizations owe mixed beverage gross receipts tax. A governmental entity or nonprofit organization is not exempt from the payment of mixed beverage gross receipts tax on receipts from the sale, service, or preparation of alcoholic beverages. This includes sales of alcohol during any fundraising sale or auction. For more information, refer to §3.1001(e) of this title.

(g) Lump-sum charges that include alcoholic beverages and additional items together for a single price.

(1) Permittees shall compute mixed beverage sales tax on alcoholic beverages that are served together with meals for a single charge in the same manner as mixed beverage gross receipts tax is computed in §3.1001(c)(1)(D) of this title.

(2) Permittees shall compute mixed beverage sales tax on alcoholic beverages that are served at private clubs, special events, or functions in the same manner as mixed beverage gross receipts tax is computed in §3.1001(d) of this title.

(h) Inventory used in cooking. Alcoholic beverages used in cooking are exempt from both mixed beverage sales tax under Tax Code, Chapter 183, and sales and use tax under Tax Code, Chapter 151, provided that the permittee follows the record-keeping requirements set out in §3.1001(h) and (l) of this title.

(i) Monthly mixed [~~Mixed~~] beverage sales tax reports.

~~[(1) Due dates. Reports and remittances are due on or before the 20th day of the month following the reporting period end date.~~

~~Reports and remittances due on a Saturday, Sunday, or legal holiday may be submitted on the next business day.]~~

~~[(2) Reporting periods.]~~

~~[(A) Monthly filers. Permittees who have \$1,500 or more in mixed beverage sales tax per quarter to report must file monthly reports.]~~

~~[(B) Quarterly filers. Permittees who have less than \$1,500 in mixed beverage sales tax per quarter to report may file returns quarterly. The quarterly reporting periods end on March 31, June 30, September 30, and December 31.]~~

~~[(3)] Each permittee must file a monthly mixed beverage sales tax report on or before the 20th day of the following month even if no sales or services of alcoholic beverages were made during the month [~~report period~~]. Reports and payments due on a Saturday, Sunday, or legal holiday may be submitted on the next business day. The Texas Mixed Beverage Sales Tax report is due in addition to the Texas Mixed Beverage Gross Receipts Tax report to be filed under Tax Code, Chapter 183, Subchapter B, and the Texas Sales and Use Tax report required to be filed under Tax Code, Chapter 151.~~

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 January 10, 2020.

TRD-202000083

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

Earliest possible date of adoption: February 23, 2020

For further information, please call: (512) 475-0387



TITLE 43. TRANSPORTATION

PART 16. WILLIAMSON COUNTY TAX ASSESSOR-COLLECTOR

CHAPTER 435. MOTOR VEHICLE TITLE SERVICES

43 TAC §§435.1 - 435.16

The Williamson County Tax Assessor-Collector proposes new 43 TAC §§435.1 - 435.16, concerning the regulation of motor vehicle title services. The Williamson County Tax Assessor-Collector, Larry Gaddes, has linked these services to document fraud and vehicle theft. Texas Transportation Code, Chapter 520, Subchapter E regulates motor vehicle title services in counties with a population of more than 500,000. Subchapter E requires motor vehicle title services in these counties to be registered, licensed, and required to maintain records for inspection.

Mr. Gaddes has considered the impact of the proposed section on government growth during the first five years that the rule would be in effect, and has determined that: (1) it creates a government program; (2) implementation will not require the creation or elimination of employee positions; (3) implementation will not require an increase or decrease in any future appropriations from the Texas legislature; (4) it requires an increase in payment of

fees to the Tax Assessor-Collector which will offset the costs of regulating motor vehicle title services to reduce vehicle theft and related document fraud; (5) the proposed section creates a new regulation in accordance with Chapter 520, Subchapter E of the Texas Transportation Code; (6) it does not expand, limit or repeal an existing regulation; (7) as a new regulation, it increases the number of individuals subject to its applicability; and (8) it does not affect this state's economy.

Mr. Gaddes has determined that for the first five-year period these sections are in effect, there will be no fiscal impact for state or local government. The amount of the fee directly relates to the amount necessary for the department to recover the cost of its operation. The county will keep all revenues from licensing fees to offset spending.

Mr. Gaddes also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcement of the rules will be to reduce vehicle theft and related document fraud.

Mr. Gaddes has received motor vehicle title services records from approximately 7 to 8 distinct entities per year since 2017. Nearly all of these entities are small businesses, many of which are micro-businesses. The economic costs for persons who are required to comply with these sections will be the license fee, which is due upon application and is not refundable along with an annual license renewal fee. Small businesses that comply with the sections may experience increased business opportunities because noncompliant competitors will be sanctioned. Mr. Gaddes does not believe that the proposed section will have an adverse economic effect on rural communities.

In preparing the proposed sections, Mr. Gaddes has considered processes which require less information from applicants, informal tracking of records, and random document confirmation. However, study and experience lead to the conclusion that public welfare and safety would benefit from clear, consistent, and published standards. Mr. Gaddes also has considered assessing lower and higher license fees but concluded the fees as set are appropriate for Williamson County. Required research, background checks and review prior to issuance of a title service and runner license require time on the part of the tax office and associated county offices to conduct background checks. Additionally, title services are monitored throughout the year and upon renewal are put through a review process similar to the original application process.

Comments on the proposed new sections may be submitted to Matt Johnson, Williamson County Chief Deputy, Williamson County Tax Office, 904 S. Main St. Georgetown, Texas 78626. The deadline for all comments is 30 days after publication in the *Texas Register*.

Statutory Authority. The Williamson County Tax Assessor-Collector proposes the new sections pursuant to Transportation Code, Chapter 520, Subchapter E, which provides the county tax assessor-collector the authority to adopt rules regarding motor vehicle title services.

This proposal does not affect any other statutes, articles or codes.

§435.1. Definitions.

(a) "Application." Except where otherwise expressly stated, the term "Application" includes all documentation submitted with a Motor Vehicle Title Service Application Form or Motor Vehicle Title Service Runner Application Form.

(b) "Motor vehicle" has the meaning assigned by Texas Transportation Code §501.002.

(c) "Motor vehicle title service" or "MVTS" means any person or entity that for compensation directly or indirectly assists other persons in obtaining title documents, in either written or electronic form, by submitting, transmitting, or sending applications for title documents to the appropriate government agencies.

(d) "Title documents" means motor vehicle title applications, motor vehicle registration renewal applications, motor vehicle mechanic's lien title applications, motor vehicle storage lien title applications, motor vehicle temporary registration permits, motor vehicle title application transfers occasioned by the death of the title holder, motor vehicle inquiries, license plate and/or sticker replacement or any other motor vehicle related transaction.

(e) "Title service runner," "Runner" or "MVTSR" means any person employed by a licensed motor vehicle title service to submit or present title documents to the county tax assessor-collector on behalf of that licensed motor vehicle title service.

§435.2. License Required.

(a) License No./Effective Date. Each license granted will be assigned a number. The effective date of issuance is the date upon which notice is sent under §435.8(c) of this chapter (relating to Application Review/Applicant Background Check/Applicant Interview).

(b) Original. Each licensee shall be issued one original license.

(c) A title service shall process all work at the Williamson County Main St. office for the first ninety days of the license period, after which the title service may process work at any Williamson County Tax Assessor-Collector location. A title service whose license is renewed under §435.12(a) - (d) of this chapter (relating to License Renewal) may, upon the commencement of the renewal period, process work at any Williamson County Tax Assessor-Collector location.

§435.3. Eligible Applicants.

A person may not apply for a Motor Vehicle Title Service License or Motor Vehicle Title Service Runner License unless the person is:

(1) at least 18 years of age on the date the application is submitted; and

(2) authorized to handle financial transactions whether representing himself/herself or another.

§435.4. Criminal Background Check.

Each Applicant for a license must submit to a criminal background check.

§435.5. Submission of Application.

Each Applicant must submit his/her completed application form, including all required documentation, in person to the Tax Assessor-Collector or the Tax Assessor-Collector's designated representative. The Tax Assessor-Collector or the Tax Assessor-Collector's designated representative will accept the completed Application provided Applicant:

(1) presents a valid Texas driver's license and a valid Social Security Card or, if applicable, a U.S.-issued alien identification card issued by the Department of Homeland Security, and permits the Tax Assessor-Collector or Tax Assessor-Collector's designated representative to make a copy of both; and

(2) pays the Application fee.

§435.6. Completion of Motor Vehicle Title Service Application.

(a) A Motor Vehicle Title Service ("MVTS") License Application will not be considered complete under §435.5 of this chapter

(relating to Submission of Application) unless all applicable information identified on the Title Service License Application form ("TSLA Form") has been provided, all required documentation has been attached, and the Applicant identified on the TSLA Form has executed the Applicant Affidavit section of the Form as described in subsection (d) of this section. If Applicant Business is a partnership, each partner must submit a separate application. If Applicant Business is a corporation, each officer and director must submit a separate application and identify the state of incorporation on that application.

(b) The following documents must be submitted with and attached to the signed and completed TSLA Form:

(1) a copy of Applicant's valid Texas driver's license and valid Social Security Card, or if applicable, a U.S.-issued alien identification card by the Department of Homeland Security;

(2) an original or certified copy of:

(A) if Applicant Business is a DBA, each applicable Assumed Name Certificate;

(B) if Applicant Business is a corporation, the applicable Articles of Incorporation; or

(C) if Applicant Business is a partnership, the applicable Partnership Agreement; and

(3) all forms required by the Denton County Tax Assessor-Collector, signed and completed as required by the Williamson County Tax Assessor-Collector.

(c) Each Applicant shall provide all information indicated on the TSLA Form, which information shall include but is not limited to:

(1) Applicant name, address, telephone number, social security number, date of birth, Texas Driver's license number, citizenship status, and what position the Applicant holds in the Applicant Business (i.e., owner, principal, director, officer, partner);

(2) Applicant Business name, physical address, mailing address, and telephone number(s);

(3) identification of Applicant Business type (i.e., DBA, Corporation or Partnership);

(4) name under which Service will conduct business (if different than Applicant Business name);

(5) the physical address(es) (including any applicable suite number(s)) of each location/office from which the Service will conduct business (a P.O. Box will not be accepted) and a corresponding photo, with address numbers clearly visible, of each location/building where business is to be conducted;

(6) the name(s), as applicable, of:

(A) each individual with any ownership interest in the Applicant Business; and

(B) each principal, officer or director of Applicant Business;

(7) whether the Applicant or Applicant Business has previously applied for an MVTS license (or permit), the result of the previous application, and whether the Applicant or Applicant Business has ever held an MVTS license (or permit) that was revoked or suspended;

(8) Applicant Business federal tax identification number; and

(9) Applicant Business state sales tax number.

(d) Each Applicant shall execute the Applicant Affidavit Section of the Form, attesting to the following:

(1) that information provided in and with the application is true and accurate; and

(2) that Applicant freely grants the Williamson County Tax Assessor-Collector and local law enforcement agencies permission to conduct a criminal background investigation on Applicant and/or Applicant's business.

§435.7. Completion of Title Service License Runner Application.

(a) A Motor Vehicle Title Service Runner License Application will not be considered complete under §435.5 of this chapter (relating to Submission of Application) unless all applicable information identified on the Title Service Runner License Application form ("TSRA Form") has been provided, all required documentation has been attached, and the Applicant identified on the TSRA Form has executed the Applicant Affidavit section of the Form as described in subsection (c) of this section. The following documents must be submitted with and attached to the signed and completed TSRA Form:

(1) a copy of Applicant's valid Texas driver's license and valid Social Security Card, or if applicable, a U.S.-issued alien identification card by the Department of Homeland Security;

(2) all forms required by the Williamson County Tax Assessor-Collector, signed and completed as required by the Williamson County Tax Assessor-Collector; and

(3) sworn affidavits of each owner, partner, officer or director of the Licensed Title Service identified on the TSRA form, stating that the Licensed Title Service (which must be identified specifically in the statement by name and License No.) employs Applicant and authorizes him/her to submit or present title documents to the Williamson County Tax Assessor-Collector on its behalf.

(b) Applicants shall provide all information indicated on the TSRA Form, which information shall include but is not limited to:

(1) the name of the licensed motor vehicle title service for which the Applicant seeks a license to submit or present title documents, the MVTS License Number, and date of issue;

(2) the name, office address and office phone of the title service owner, officer or employee who will supervise Applicant;

(3) Applicant name, address, telephone number, social security number, date of birth, Texas Driver's license number, and citizenship status;

(4) whether the Applicant has previously applied for a MVTS or MVTSR license (or permit), the result of the previous application(s), and whether the Applicant or Applicant Business has ever held an MVTS or MVTS Runner license (or permit) that was revoked or suspended; and

(5) a sworn affidavit stating that the Applicant is employed by the motor vehicle title service identified on the Application and authorized by that motor vehicle title service to submit or present title documents to the county tax assessor-collector.

(c) Each Applicant shall execute the Applicant Affidavit Section of the Form, attesting to the following:

(1) that information provided in and with the application is true and accurate;

(2) that Applicant is employed by the Title Service identified in Section 1 of the Application to submit or present title documents to the Williamson County Tax Assessor-Collector under Chapter 520 of the Texas Transportation Code; and

(3) that Applicant freely grants the Williamson County Tax Assessor-Collector and local law enforcement agencies permission to conduct a criminal background investigation on Applicant and/or Applicant's business.

§435.8. Application Review/Applicant Background Check/Applicant Interview.

(a) After acceptance of a completed application, Williamson County Tax Assessor-Collector will conduct an initial review of the Application. If information known to or obtained by the Williamson County Tax Assessor-Collector conflicts or appears to conflict with information supplied in the Application, Williamson County Tax Assessor-Collector may ask the Applicant to provide additional clarifying or verifying information.

(b) Following initial application review under subsection (a) of this section, Williamson County Tax Assessor-Collector will conduct the Applicant Background check. Upon completion of this process, interviews for eligible Applicants may be scheduled according to Williamson County Tax Assessor-Collector office needs/staff availability. Applicants are responsible for reserving open interview slots, which will be assigned by Williamson County Tax Assessor-Collector on a first-come, first-served basis. No license may issue unless each person required to apply for the requested license has completed the interview process if requested by the Williamson County Tax Assessor-Collector. During the interview process, Williamson County Tax Assessor-Collector may question Applicant and request additional documentation for the purpose of establishing Applicant's business reputation and character.

(c) Applicants will be notified of the outcome of an application within 30 days of receiving the application or the date the interview process is completed should one be required. Such notice will be sent by certified mail:

(1) to Runner License Applicants at the home address listed on the Application; and

(2) to Title Service License Applicants at the business mailing address listed on the Application.

§435.9. License.

(a) License No./Effective Date. Each license granted will be assigned a number. The effective date of issuance is the date upon which notice is sent under §435.8(c) of this chapter (relating to Application Review/Applicant Background Check/Applicant Interview).

(b) Original. Each licensee shall be issued one original license.

(c) A title service and/or runner shall process all work at the Georgetown Main office for the first ninety days of the license period, after which the title service may process work at any WILLIAMSON COUNTY TAX ASSESSOR/COLLECTOR location. A title service whose license is renewed under §435.12.(a) - (d) of this chapter (relating to License Renewal) may, upon the commencement of the renewal period, process work at any WILLIAMSON COUNTY TAX ASSESSOR/COLLECTOR location.

§435.10. Records and Reporting.

(a) MVTS.

(1) Each licensed MVTS must inform Williamson County Tax Assessor-Collector of a change to its primary physical and/or mailing address by submitting a written address change request form to the Williamson County Tax Assessor-Collector. Williamson County Tax Assessor-Collector shall update the address information upon receipt of such request.

(2) A licensed MVTS shall report a change to its principals, partners, owners, officers, or directors as provided in §435.14(b)(1) of this chapter (relating to Suspension).

(3) Each licensed MVTS must keep on file at its principal place of business:

(A) the original MVTS license and Application (including all submitted documentation); and

(B) a copy of each license issued to a Runner for that MVTS, and of the Application (including all submitted documentation) submitted by each such licensed runner.

(b) Runner.

(1) In order to submit or present documents on behalf of an MVTS, a valid runner license must be presented. A licensed runner may submit or present title documents to the county tax assessor-collector only on behalf of the licensed motor vehicle title service for which he/she is a licensed runner.

(2) Each licensed Runner must inform Williamson County Tax Assessor-Collector if his/her home address has changed by submitting a written home address change request to Williamson County Tax Assessor-Collector. Upon receipt of such request, Williamson County Tax Assessor-Collector will update the Runner's home address information.

§435.11. License Fees.

(a) All License fees must be paid by business check on account in the applying (Title Service License) or employing (Title Service Runner License) Title Service's name, unless the Williamson County Tax Assessor-Collector in its sole discretion agrees to accept other forms of payment. Other forms of payment will not be considered accepted except as authorized in writing by the Williamson County Tax Assessor-Collector.

(b) The fee for a motor vehicle title service license shall be \$300 for the initial application and \$300 for each annual renewal.

(c) The fee for a title service runner license shall be \$100 for the initial application and \$100 for each annual renewal.

(d) The fee for replacement of a license issued under §435.9(b) of this chapter (relating to License), lost title service license, or title runner license shall be \$20.

§435.12. License Renewal.

(a) A license issued under these rules expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee.

(b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the county tax assessor-collector before the expiration date of the license the required renewal fee. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(c) If a license has been expired for 90 days or less, the person/entity (as applicable), may renew the license by paying to the county tax assessor-collector 1-1/2 times the required renewal fee.

(d) If a license has been expired for longer than 90 days but less than one year, the person/entity (as applicable), may renew the license by paying to the county tax assessor-collector two times the required renewal fee.

(e) If a license has been expired for one year or longer, the person/entity (as applicable) may not renew the license. The person/entity may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(f) Notwithstanding subsection (e) of this section, if a person/entity (as applicable) was licensed in this state, moved to another state, and has been doing business in the other state for the two years preceding application, the person/entity may renew an expired license. The person must pay to the county tax assessor-collector a fee that is equal to two times the required renewal fee for the license.

(g) Before the 30th day preceding the date on which a license expires, the county tax assessor-collector shall notify the license holder of the impending expiration. The notice must be in writing and sent to the license holder's last known address according to the records of the county tax assessor-collector.

§435.13. Denial or Revocation of License.

(a) Grounds for the denial (after completed Application submission) or revocation of a license include, but are not limited to:

(1) past or present submission by licensee or any applicant for the license, of a license application or related document to the Williamson County Tax Assessor-Collector that contains false information or that by its submission constitutes a misrepresentation of fact;

(2) the licensee or any applicant for the license has been convicted of any felony, any crime of moral turpitude, or deceptive business practice for which the sentence completion date is fewer than five years from the application date;

(3) licensee or any applicant for the license has been criminally or civilly sanctioned for the unauthorized practice of law by any government or quasi-government body with jurisdiction to do so;

(4) One or more than one of the affiants described in §435.7(a)(3) of this chapter (relating to Completion of Title Service Runner License Application) has withdrawn his/her affidavit or otherwise informed Williamson County Tax Assessor-Collector that Applicant is not employed and authorized to submit title documents on behalf of the title service identified in the application;

(5) disruptive or aggressive behavior by a licensee or any applicant for the license at any Williamson County Tax Assessor-Collector location that in the opinion of the Williamson County Tax Assessor-Collector creates a security concern;

(6) any dishonest, fraudulent, or criminal activity by a licensee or any applicant for the license; and/or

(7) failure to pay fines and/or fees identified in a suspension notice under §435.14(a) of this chapter (relating to Suspension) within 30 days of the suspension's effective date.

(b) Upon its determination that a license should be denied or revoked, Williamson County Tax Assessor-Collector shall send notice of denial/revocation to the applicant(s)/licensee by certified mail. Notice of any license denial shall be sent to each applicant at the home address listed on his/her application form. Notice of a Runner license revocation shall be sent to the most recent home address on file. Notice of a Title Service License revocation shall be sent to the attention of "all" MVTS partners, owners, officers, directors, or principals (as applicable) at the most recent primary physical business address on file for licensee. The notice shall identify the grounds that warrant the determination.

(c) Revocation - effective date. Revocation shall be effective upon the date notice described in subsection (b) of this section is sent.

(d) A licensee whose license is denied or revoked may not apply for any license before the first anniversary of the date of the revocation. No applicant for a license that has been denied or revoked may apply for any license before the first anniversary of the date of revocation.

§435.15. Appeals.

(a) An applicant/licensee may appeal the denial/revocation of a license by filing a written appeal request with the Williamson County Tax Assessor-Collector within 30 days of the date notice is sent under §435.13(b) of this chapter (relating to Denial or Revocation of License). Any information/documentation in support of such appeal must be submitted with the appeal request.

(b) The Williamson County Tax Assessor-Collector shall appoint a Review Board consisting of five members. At least one member of the Review Board shall be a law enforcement officer. The Williamson County Tax Assessor-Collector may appoint one or more Williamson County Tax Assessor-Collector employees to serve on the Board. Provided at least one law enforcement officer is in attendance, appeals shall be reviewed at a meeting of at least three members of the Board. Such meetings shall be held periodically as determined by the Williamson County Tax Assessor-Collector.

(c) Timely filed appeals will be scheduled for review at the next Review Board meeting, which meeting shall take place no less than sixty (60) days following the filing of the appeal. An applicant/licensee whose appeal is under review may attend the meeting and, at the Board's discretion, provide testimony in support of the appeal. The Board also has discretion to consider documentation not timely provided under subsection (a) of this section.

(d) Recommendation. The law enforcement officer in attendance shall preside over the meeting and determine when each appeal has been sufficiently considered, discussed and reviewed by the members in attendance. Following such determination, each member in attendance shall state and briefly describe the reasons for his/her opinion as to whether the action appealed should be sustained. Thereafter, the presiding law enforcement officer shall independently make a written recommendation to the Williamson County Tax Assessor-Collector. The written recommendation shall be signed by the presiding officer and shall identify which, if any, of the other members in attendance did not agree with it.

(e) Within (15) days of receiving the presiding officer's written recommendation, the Williamson County Tax Assessor-Collector shall make a final determination on the appeal. The Williamson County Tax Assessor-Collector shall consider the presiding officer's recommendation before making the final determination.

(f) The Williamson County Tax Assessor-Collector shall send notice of its final determination to the applicant(s)/licensee by certified mail as follows:

(1) License denial - to each applicant at the home address listed on his/her application form.

(2) Runner License revocation - to the most recent home address on file.

(3) Title Service License revocation - to the attention of all partners, owners, officers, directors, or principals (as applicable) at the most recent primary physical business address on file.

§435.16. Amendment of Rules.

The County Tax Assessor-Collector may amend these rules in his/her sole discretion and as deemed necessary at any time.

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 January 10, 2020.

TRD-20200085

Larry Gaddes

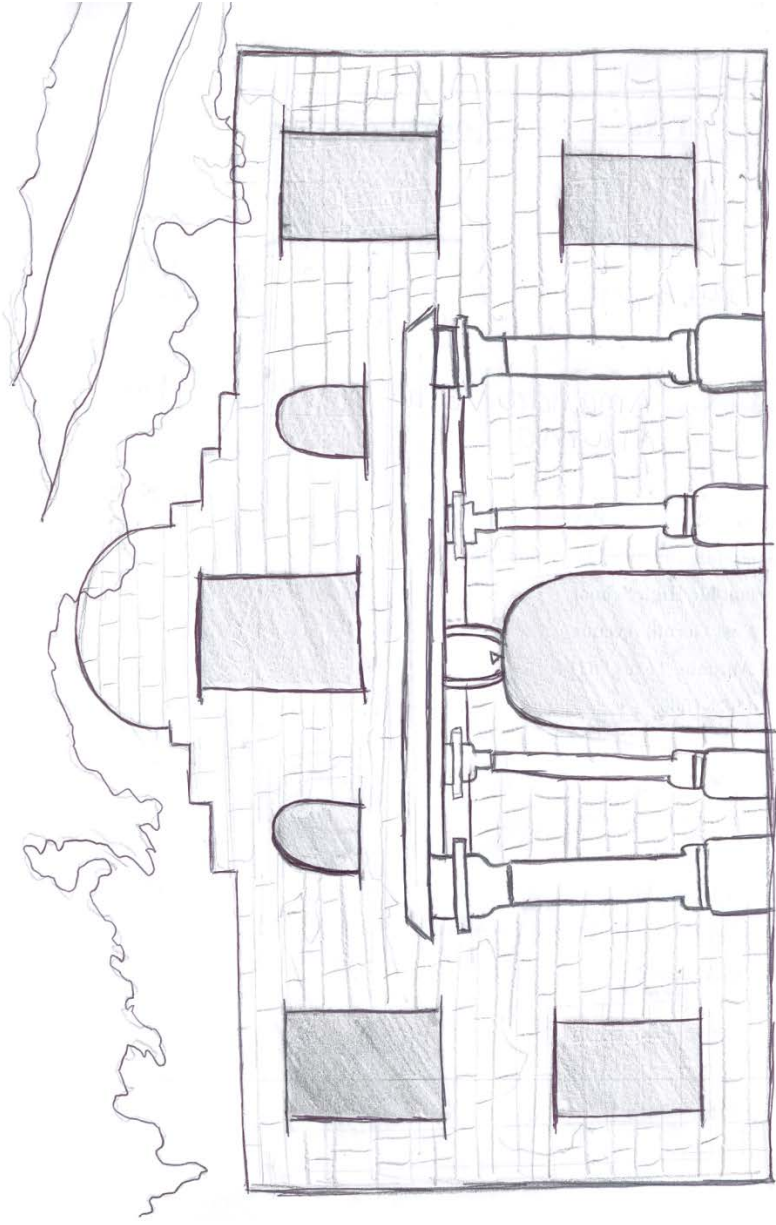
Williamson County Tax Assessor-Collector

Williamson County Tax Assessor-Collector

Earliest possible date of adoption: February 23, 2020

For further information, please call: (512) 943-1641





WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.30

The Texas Department of Public Safety withdraws the proposed amended §15.30, which appeared in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6298).

Filed with the Office of the Secretary of State on January 13, 2020.

TRD-202000111

D. Phillip Adkins

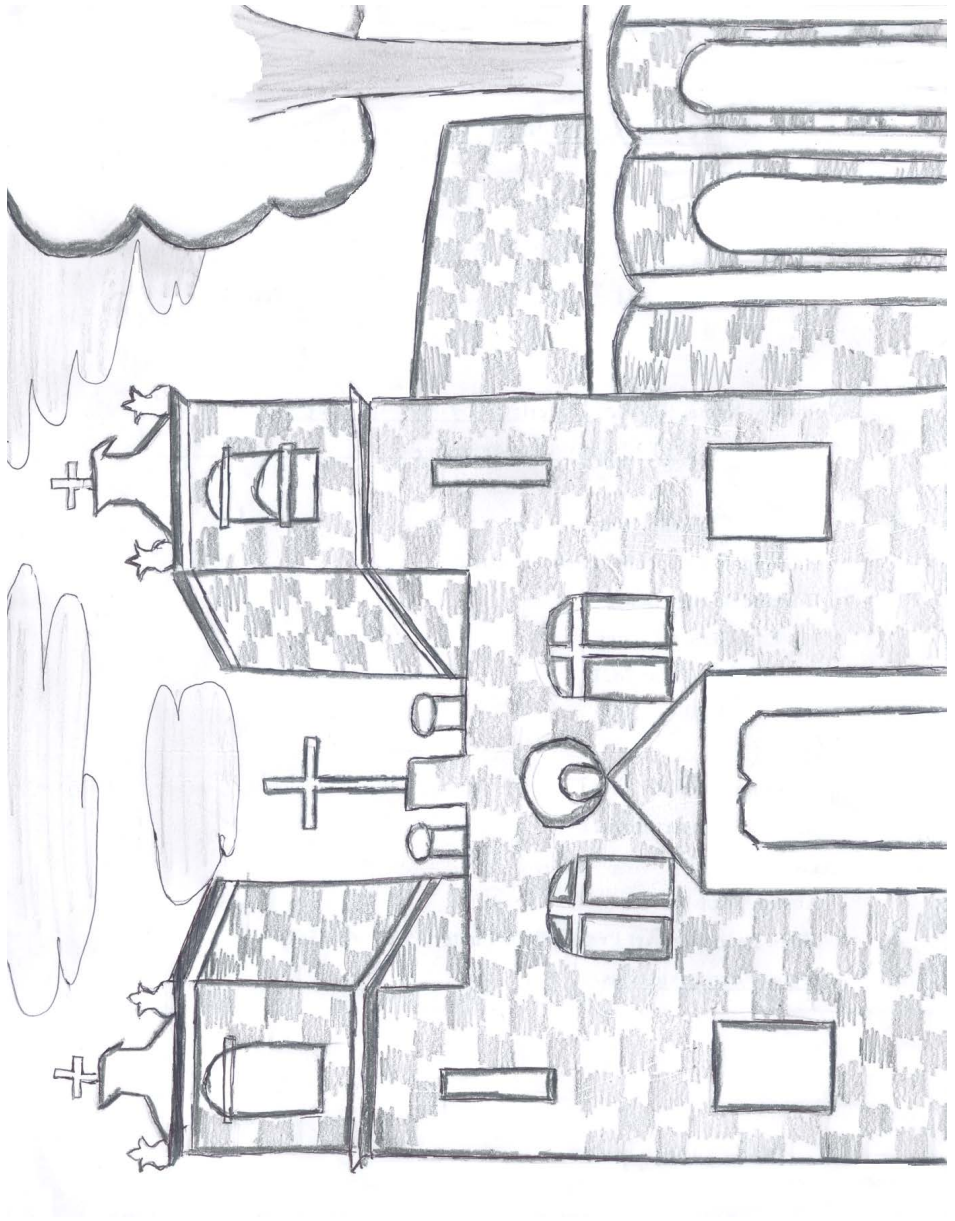
General Counsel

Texas Department of Public Safety

Effective date: January 13, 2020

For further information, please call: (512) 424-5848





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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

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

SUBCHAPTER B. ADVISORY COMMITTEES DIVISION 1. COMMITTEES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §351.819, concerning the Behavioral Health Integration Advisory Committee; §351.831, concerning the Employment First Task Force; and §351.835, concerning the Advisory Committee on Qualifications for Health Care Translators and Interpreters, without changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7101). The repeals will not be republished. HHSC also adopts without changes amendments to §351.805, concerning the State Medicaid Managed Care Advisory Committee; §351.821, concerning the Value-Based Payment and Quality Improvement Advisory Committee; §351.823, concerning the e-Health Advisory Committee; §351.827, concerning the Palliative Care Interdisciplinary Advisory Council; and §351.833, concerning the STAR Kids Managed Care Advisory Committee. The rules will not be republished. Section 351.837, concerning the Texas Autism Council, is adopted with changes to the proposed text as published in the November 22, 2019, issue of the *Texas Register* (44 TexReg 7101). The rule will be republished.

BACKGROUND AND JUSTIFICATION

In 2015, the Texas Legislature removed 38 advisory committees from HHSC that were established by statute and, by adopting Texas Government Code §531.012, authorized the Executive Commissioner to establish advisory committees by rule. The Executive Commissioner's advisory committee rules were effective July 1, 2016. Consistent with Texas Government Code §2110.008, the advisory committee rules designated an abolition date for advisory committees established under Texas Government Code §531.012 approximately four years from the date of the rules' effective date. Several of the advisory committees are set to expire December 31, 2019.

The repeals are necessary to terminate advisory committees that have expired or are abolished. The amendments are necessary to extend committees whose terms expire December 31, 2019, and whose work is not completed. In addition, the amendments for the Palliative Care Interdisciplinary Advisory Council and the STAR Kids Managed Care Advisory Committee are necessary to comply with statute.

COMMENTS

The 14-day comment period ended December 7, 2019.

During this period, HHSC received comments regarding the proposed rules from 18 commenters, including Texas Parent to Parent, Autism Society of Texas, Texas Association for Behavior Analysis Public Policy Group, Easterseals Coalition Serving Texas, and 14 individuals. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Some commenters favored the amendments to §351.805, extending the State Medicaid Managed Care Advisory Committee to December 31, 2023.

Response: HHSC appreciates the comments; no change is necessary.

Comment: One commenter was not in favor of the repeal of §351.831, concerning the Employment First Task Force.

Response: HHSC declines to continue this rule. The Employment First Task Force was established by statute, Texas Government Code §531.02448. That statute expired, by its terms, September 1, 2017. Consequently, the rule pertaining to the Employment First Task Force is no longer needed and will be repealed.

Comment: Some commenters favored the amendments to §351.833, extending the STAR Kids Managed Care Advisory Committee to December 31, 2023.

Response: HHSC appreciates the comments; no change is necessary.

Comment: Several commenters favored the amendments to §351.837, extending the Texas Autism Council to December 31, 2023.

Response: HHSC appreciates the comments. HHSC will, however, revise the proposed amendments to extend the council until December 31, 2020, to prioritize optimal placement of relevant issues. In addition to the council, several other advisory committees currently address issues regarding autism, and HHSC will work to identify the most effective forum(s) for the council's issues. HHSC agrees with the commenters that the issues the Autism Council addresses are extremely important, and HHSC continues its commitment to providing the issues the attention they deserve.

1 TAC §§351.805, 351.821, 351.823, 351.827, 351.833, 351.837

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas

Government Code §531.012, which authorizes the Executive Commissioner to establish advisory committees by rule and to include in the rule a date of abolition. The amendment of §351.827 is consistent with Senate Bill 1731, §10, 85th Legislature, Regular Session, 2017, and the amendment of §351.833 is consistent with Texas Government Code §533.00254(b).

§351.837. *Texas Autism Council.*

(a) **Statutory authority.** The Texas Autism Council is established in accordance with HHSC's general authority to establish committees under Texas Government Code §531.012(a).

(b) **Purpose.** The Texas Autism Council advises and make recommendations to HHSC and the Executive Commissioner to ensure that the needs of persons of all ages with autism spectrum disorder and their families are addressed and that all available resources are coordinated to meet those needs.

(c) **Tasks.** The Texas Autism Council performs the following activities:

(1) makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee; and

(2) other tasks consistent with its purpose that are requested by the Executive Commissioner.

(d) **Reporting requirements.** The Texas Autism Council performs reporting activities assigned by Texas Human Resources Code §114.008.

(e) **Abolition.** The Texas Autism Council is abolished, and this section expires, on December 31, 2020.

(f) **Membership.**

(1) The Texas Autism Council consists of no more than 24 members.

(A) Each public member is appointed by the Executive Commissioner.

(B) Each ex officio member is appointed by the commissioner or executive head of the represented state agency.

(C) Each member must have knowledge of and an interest in autism spectrum disorder.

(D) Texas Autism Council membership is allocated as follows:

(i) The majority of public members are family members of a person with autism spectrum disorder.

(ii) A representative from each of the following state agencies will serve as an ex officio member:

(I) Texas Department of Aging and Disability Services;

(II) Texas Department of Family and Protective Services;

(III) Texas Department of State Health Services;

(IV) Texas Health and Human Services Commission;

(V) Texas Workforce Commission; and

(VI) Texas Education Agency.

(2) Except as necessary to stagger terms, each public member is appointed to serve a term of two years.

(3) An ex officio member serves in an advisory capacity only and may not:

(A) serve as an officer; or

(B) vote.

(g) **Presiding officer.**

(1) The Texas Autism Council selects a presiding officer from among its members.

(2) Unless reelected, the presiding officer serves a term of one year.

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 January 7, 2020.

TRD-202000040

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: January 27, 2020

Proposal publication date: November 22, 2019

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



1 TAC §§351.819, 351.831, 351.835

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.012, which authorizes the Executive Commissioner to establish advisory committees by rule and to include in the rule a date of abolition. The amendment of §351.827 is consistent with Senate Bill 1731, §10, 85th Legislature, Regular Session, 2017, and the amendment of §351.833 is consistent with Texas Government Code §533.00254(b).

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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Karen Ray

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DIVISION 1. COMMITTEES

1 TAC §351.839

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts §351.839, concerning Nursing Facility Payment Methodology Advisory Committee. Section 351.839 is adopted without changes to the proposed

text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7237). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The Centers for Medicare & Medicaid Services implemented a new payment model for Medicare Skilled Nursing Facilities effective October 1, 2019. Due to changes resulting from this implementation, the data HHSC uses to calculate the current Texas Medicaid reimbursement methodology for nursing facilities (NFs) will not be accessible through the current federal source after September 30, 2020. HHSC is using this opportunity to consider revisions to the Medicaid NF payment rate methodology.

The new section creates the Nursing Facility Payment Methodology Advisory Committee (NF-PMAC) to advise HHSC on the establishment and implementation of recommended improvements to the NF payment methodology and other NF reimbursement topics. By establishing the NF-PMAC, HHSC will benefit from stakeholder knowledge and expertise as HHSC considers possible changes to the NF payment methodology.

COMMENTS

The 31-day comment period ended December 30, 2019. During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.012, which provides that the Executive Commissioner of HHSC shall establish and maintain advisory committees and adopt rules governing such advisory committees in compliance with Chapter 2110 of the Texas Government Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray

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Texas Health and Human Services Commission

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CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8065, concerning Disproportionate Share Hospital Reimbursement Methodology, §355.8066,

concerning Hospital-Specific Limit Methodology, and §355.8212, concerning Waiver Payments to Hospitals for Uncompensated Charity Care. The amendments are adopted without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7239), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The rule amendments describe new payment caps for the Disproportionate Share Hospital (DSH) and Uncompensated Care (UC) Medicaid supplemental payment programs. When combined, DSH and UC represent almost \$5.5 billion in Medicaid payments for Texas hospitals. The programs are meant to reimburse hospitals that provide services to predominantly Medicaid and low-income patients. So, the allocation methodology among such providers should account for the relative amounts of Medicaid and low-income patients served, as well as the overall payments hospitals receive for those patients.

In Texas, two payment caps exist for hospitals that participate in DSH and UC. There is a federal payment cap, known as the final hospital-specific limit (final HSL), that is described in federal law. There is also a state payment cap, known as the interim hospital-specific limit (interim HSL), that HHSC may define. The state payment cap is calculated in the payment year for DSH and UC, but the federal payment cap is calculated two years after the payment year using updated data. HHSC linked the interim HSL to the final HSL so that there would be a limited chance that a recoupment would occur after the final HSL was calculated.

The federal payment cap has been the subject of ongoing federal litigation for several years. That litigation relates to the inclusion of payments from other insurance payors and Medicare when a Medicaid client also has other insurance or Medicare. HHSC will continue to monitor this litigation and examine if the Texas payment cap should change in response to the outcome of the federal litigation. However, HHSC is implementing a full offset methodology for the state payment cap. That means any payment for services provided to a Medicaid client from any source will be included as an offset to all appropriate Medicaid costs.

HHSC seriously considered two other options for the state payment cap before proposing this amendment. HHSC considered the approach recommended by the Medicaid and CHIP Payment and Access Commission (MACPAC), where the Texas payment caps would not contain either the costs or payments for a Medicaid client who also has other insurance or Medicare. HHSC also considered capping, in the aggregate, other insurance and Medicare payments at the Medicaid allowable cost. However, HHSC determined that including all Medicaid costs and all third-party payments provides a more appropriate measure of financial need given the purpose of the payment programs at issue.

HHSC met with and received feedback from stakeholders prior to publication of the proposal. After publication, HHSC evaluated both written comments and oral testimony that was received during a public hearing.

COMMENTS

The 31-day comment period ended December 30, 2019.

During this period, HHSC received comments regarding the proposed rules from 15 commenters: Children's Hospital Association of Texas (CHAT), CHRISTUS Health

Community Health Systems (CHS), Community Hospital Corporation, Doctors Hospital at Renaissance Health System (DHR Health), HCA Healthcare (HCA), LifePoint Health, Parkland Health and Hospital System, Steward Health Care System, Teaching Hospitals of Texas (THOT), Tenet Healthcare, Texas Children's Hospital, Texas Organization of Rural & Community Hospitals (TORCH), Universal Health Services, Inc., and University Medical Center of El Paso.

A summary of comments relating to the rules and HHSC's responses to the comments follow.

Comment: Multiple commenters support the proposed state payment cap methodology. Specifically, several commenters wrote that they support HHSC's proposal because it properly allocates scarce funds based on actual unreimbursed costs and that including all Medicaid costs and third-party payments provides the most accurate measure of the financial burden of treating low-income patients for hospitals and reduces the likelihood of recoupments. One commenter wrote that HHSC's proposed policy aligns with state and federal policy requiring that Medicaid be the payor of last resort.

Response: HHSC appreciates and agrees with the feedback. No changes were made in response to this comment.

Comment: Three commenters proposed HHSC adopt a different methodology that would exclude Medicaid-secondary costs and payments, as recommended by the Medicaid and CHIP Payment and Access Commission (MACPAC) in June 2019.

Response: HHSC declines to adopt the MACPAC methodology at this time. The MACPAC approach was one of the two other options HHSC seriously considered before proposing this amendment. Medicaid is the payor of last resort and HHSC has determined that including all Medicaid costs and all third-party payments provides a more appropriate measure of financial need given the purpose of the payment programs at issue.

HHSC understands that there is proposed legislation that would adopt the MACPAC methodology. HHSC will continue to monitor the legislation and determine if there is a need for future rule amendments. No changes were made in response to this comment.

Comment: One commenter urged HHSC to adopt the Senate Bill (S.B.) 7 methodology that would include Medicare and other insurance payments up to the Medicaid allowable cost. The commenter also suggested that HHSC reconsider utilizing the proposed full-offset methodology because it will result in locking some hospitals out of DSH altogether, even if their final HSL would show a shortfall, because the state payment cap uses two-year-old data. The commenter added that once a hospital is locked out of the DSH program it will have no opportunity to access funds, even if recouped funds are redistributed, because they're not part of the audit that calculates final HSLs.

Response: HHSC declines to adopt the S.B. 7 methodology. The S.B. 7 approach was one of the two other options HHSC seriously considered before proposing this amendment. Medicaid is the payor of last resort and HHSC has determined that including all Medicaid costs and all third-party payments provides a more appropriate measure of financial need given the purpose of the payment programs at issue. No changes were made in response to this comment.

Comment: Several commenters did not support a methodology that would exclude all costs and payments for Medicaid patients with commercial or Medicare coverage (the MACPAC methodol-

ogy). The commenters wrote that excluding an entire segment of the Medicaid population from the state payment cap calculation diminishes the accuracy of HHSC's ultimate goal to determine the amount of uncompensated care hospitals provided to Medicaid-eligible patients. Several commenters encouraged HHSC to utilize a more conservative interim method for allocating DSH payments, such as the proposed state payment cap, even if Congress adopts the MACPAC methodology for the annual audits.

Response: HHSC appreciates the feedback. No changes were made in response to this comment.

Comment: Several commenters did not support a methodology that would cap aggregate third-party payments at Medicaid allowable costs. The commenters wrote that capping aggregate payments at allowable costs would be neither as accurate nor as efficient as using HHSC's proposed state payment cap method.

Response: HHSC appreciates the feedback. No changes were made in response to this comment.

Comment: Two commenters requested that, in the event HHSC adopts the full-offset state payment methodology, the DSH rule be amended to include self-reported Medicaid days associated with the costs and payments for the Medicaid-secondary patients in all DSH calculations.

Response: Thank you for the comment. HHSC had not contemplated this when making the proposed amendments but will take it into consideration during future rule amendments. No changes were made in response to this comment.

Comment: Several commenters recommended HHSC consider using claims based on discharge date rather than adjudication date for the state payment cap and related DSH program calculations.

Response: HHSC declines to make the suggested change. This comment is outside the scope of the proposed amendments.

Comment: Several commenters recommended HHSC consider including charges and payments submitted after the 95-day filing deadline in the state payment cap calculation.

Response: HHSC declines to make the suggested change. This comment is outside the scope of the proposed amendments.

Comment: One commenter requested that, in the event HHSC adopts the full-offset state payment methodology, HHSC implement a one-year transition period for hospitals locked out of a DSH payment to adjust for the reduction in revenue that was unforeseen when 2020 budgets were set. The commenter added that providing a transition period to such hospitals alleviates some of the problems inherent in the full-offset methodology.

Response: HHSC declines to make the suggested change. The discussion surrounding the state payment cap and the HSL has been ongoing for over a year. Aligning the state payment cap and the final HSL will limit recoupments, and it would be imprudent to continue using different calculations for the two payment caps.

Comment: One commenter requested HHSC remove TAC §355.8212(g)(2)(A)(iv) from the rule as large public hospitals no longer require adjustment to their Uncompensated Care hospital-specific limits or intergovernmental transfers (IGTs) made in the Disproportionate Share program.

Response: HHSC declines to make the suggested change. This comment is outside the scope of the proposed amendments.

Comment: Several commenters requested confirmation from HHSC that it will enforce the state payment cap rule for UC payments, or alternatively, requested that HHSC propose a rule to amend or remove the language in §355.8212(g)(2)(B) and allow stakeholders the opportunity to comment. Some commenters suggested HHSC enforce the rule as it's written. However, two commenters suggested HHSC amend the rule to remove the cap because UC payments no longer reimburse hospitals for the same costs as DSH. One commenter requested clarification from HHSC on how it intends to enforce this rule.

Response: HHSC appreciates the feedback but declines to make the suggested changes. These comments are outside the scope of the proposed amendments.

Comment: One commenter suggested HHSC amend TAC §355.8212(g)(2)(A) so that the DSH credit is limited to only the amount transferred to HHSC by a large public hospital's affiliated governmental entity to support the portion of DSH payments to that hospital and private hospitals attributable to their inpatient and outpatient charity-care costs.

Response: HHSC declines to make the suggested change. This comment is outside the scope of the proposed amendments.

Comment: Several commenters suggested HHSC limit the DSH IGT credit to the actual amount that is necessary to eliminate the reduction in large public hospitals' UC entitlement. Some commenters wrote that the current DSH IGT credit provides a wind-fall for transferring hospitals at the expense of other participating Texas hospitals.

Response: HHSC declines to make the suggested change. This comment is outside the scope of the proposed amendments.

Comment: One commenter proposed that HHSC limit the DSH credit to the amount of IGT that supported uninsured costs reimbursed in DSH.

Response: HHSC declines to make the suggested change. This comment is outside the scope of the proposed amendments.

Comment: Multiple commenters requested HHSC remove the penalties under §355.8065(n) relating to hospitals withdrawing from the DSH program. These commenters also urged HHSC to define "participation in the DSH program".

Response: HHSC declines to make the suggested changes. These comments are outside the scope of the proposed amendments.

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8065, §355.8066

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202000075

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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



DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8212

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

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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Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 30. COMMUNITY DEVELOPMENT

SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

The Texas Department of Agriculture (Department) adopts amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 30, Subchapter A, Division 1, §30.3, relating to Program Overview with changes to the proposal as published in the November 29, 2019, edition of the *Texas Register* (44 TexReg 7260). This rule will be republished.

The Texas Department of Agriculture (Department) adopts the repeal of Subchapter A, Division 3, §30.60, relating to the Disaster Relief (DR) Fund, and §30.61, relating to the Urgent Need (UN) Fund; and new Subchapter A, Division 3, §30.60 relating to the State Urgent Need (SUN) Fund, without changes to the proposal as published in the November 29, 2019, edition of the *Texas Register* (44 TexReg 7260). These rules will not be republished.

The repeal of §30.60 and §30.61 removes rules relating to the Disaster Relief (DR) Fund and the Urgent Need (UN) Fund, two funding categories in the Texas Community Development Block Grant program no longer administered by the Department. New §30.60 creates and implements rules related to the State Urgent Need Fund, which replaces the former disaster relief fund category. The new rules are related to the State Urgent Need Fund application cycle, eligibility requirements, and selection procedures. Amendments to §30.3 reflect the changes made as a result of the repeal and new rules.

The Department received one comment in support of the proposal from Madison Thomas, Economic Development Program Manager, Brazos Valley Council of Governments.

DIVISION 1. GENERAL PROVISIONS

4 TAC §30.3

The adoption is made under Texas Government Code §487.051, which designates the Department as the agency to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the adoption is Texas Government Code, Chapter 487.

§30.3. Program Overview.

(a) Fund categories. TxCDBG Program assistance is available through the following seven fund categories.

(1) Community Development (CD) Fund provides assistance for public facilities, basic infrastructure projects such as sewer or water improvements, street and drainage improvements, and housing activities, or other eligible activities as specified by the Department.

(2) Texas Capital Fund (TCF) is designed to support rural business development, retention and expansion by providing grants and/or loans for real estate or infrastructure development, or the elimination of deteriorated conditions. TCF is composed of five programs:

(A) Real Estate Program provides grants and/or loans to purchase, construct, or rehabilitate real estate that is wholly or partially owned by a community and leased to a specific benefiting business for the purpose of creating or retaining permanent jobs in primarily rural communities;

(B) Infrastructure Development Program provides grants and/or loans for infrastructure development, such as construction or improvement of water/wastewater facilities, public roads,

natural gas-line main, electric-power services, and railroad spurs, for the purpose of creating or retaining permanent jobs in primarily rural communities;

(C) Downtown Revitalization Program (DRP) provides grants for public infrastructure to foster and stimulate economic development in rural downtown areas;

(D) Main Street Improvements Program is designed to aid in the prevention or elimination of slum or blighted areas and provides assistance to expand or enhance public infrastructure in historic main street areas; and

(E) Small and Microenterprise Revolving Fund (SMRF) is available to communities partnering with a non-profit organization to provide loans to local small businesses.

(3) Colonia Fund is available for projects in severely distressed unincorporated areas which meet the definition of a colonia. The Colonia Fund is divided into five programs:

(A) Colonia Fund Construction (CFC) program is available for eligible activities designed to meet the needs of colonia residents, such as water and wastewater improvements, housing rehabilitation for low and moderate income households, the payment of assessments levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement, and other improvements including street paving and drainage;

(B) Colonia Fund Planning (CFP) program provides assistance for planning activities that prepare colonia areas for needed water, sewer and housing improvements. Assistance is provided to gather information regarding demographics, housing, land use statistics, public facilities and public services;

(C) Colonia Economically Distressed Areas Program (CEDAP) provides assistance to colonia areas to connect to a water and/or sewer system project funded by the Texas Water Development Board Economically Distressed Area Program (TWDB EDAP);

(D) Colonia Self-Help Center Program, which is administered by the Texas Department of Housing and Community Affairs (TDHCA), provides assistance to low-income and very low-income individuals and families living in colonias to finance, refinance, construct, improve or maintain safe and suitable housing; and

(E) Colonias-to-Cities Initiative Program (CCIP) provides assistance for basic infrastructure considered necessary for a colonia area to be annexed by an adjoining city.

(4) Planning/Capacity Building (PCB) Fund provides assistance to conduct planning activities that assess local needs, develop strategies to address local needs, build or improve local capacity to undertake future community development projects, or that include other needed planning elements (including telecommunications and broadband needs).

(5) State Urgent Need (SUN) Fund is available for assistance and recovery following a disaster situation.

(6) Small Towns Environment Program (STEP) Fund provides financial assistance to units of general local government that are willing to address water and sewer needs through self-help methods via local volunteers.

(7) Fire, Ambulance & Services Truck (FAST) Fund provides assistance to rural communities for fire, ambulance, and similar emergency vehicle response needs.

(b) Fund allocations. Of the state's annual CDBG allocation from HUD, the department allocates a certain percentage to each Tx-

CDBG fund category. For specific fund allocations, refer to the department's current TxCDBG Action Plan.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202000118
Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
Effective date: February 2, 2020
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For further information, please call: (512) 463-7476



DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

4 TAC §30.60, §30.61

These repeals are adopted under Texas Government Code §487.051, which designates the Department as the agency to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by this adoption is Texas Government Code, Chapter 487.

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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Tim Kleinschmidt
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-7476



4 TAC §30.60

The adoption is made under Texas Government Code §487.051, which designates the Department as the agency to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the adoption is Texas Government Code, Chapter 487.

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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Tim Kleinschmidt
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Texas Department of Agriculture
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PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 44. BOVINE VIRAL DIARRHEA

4 TAC §44.1, §44.2

The Texas Animal Health Commission in a duly noticed meeting on December 10, 2019, adopted §44.1, concerning Definitions, and §44.2, concerning General Requirements, within a new Chapter 44. The sections within new Chapter 44 are adopted with changes to the proposed text as published in the September 27, 2019, issue of the *Texas Register* (44 TexReg 5461). The change to §44.1, concerning Definitions, corrects grammatical errors in the proposed rule text in §44.1(2) and (3). The rules will be republished. The change to §44.2, concerning General Requirements, provides additional clarification that the rule applies only to those sellers that knowingly sell cattle persistently infected with bovine viral diarrhea. The changes are made in §44.2(a). The rules will be republished.

BACKGROUND AND JUSTIFICATION

Bovine viral diarrhea (BVD) is an economically impactful communicable disease of cattle with a worldwide prevalence that is endemic in most states. BVD is caused by the bovine viral diarrhea virus, a Pestivirus. The major reservoir responsible for disease spread geographically is the persistent infection syndrome (BVDV-PI) seen in calves. BVDV can result in impacts to stocker and feedlot operations by causing immunosuppression and contributing to Bovine Respiratory Disease Complex, or "Shipping Fever." This can lead to reduced feed conversion and weight gain, and increases in days on feed, morbidity, treatment cost, and mortality. In regards to cow/calf and dairy operations, all of these impacts may occur plus decreased conception rates, abortions, weak calves, and congenital defects.

The dam can be transiently infected during pregnancy and her calf become infected during development in the womb. If this infection occurs between days 40 and 120 of the pregnancy, the calf's immune system may not recognize the BVD Virus as foreign, and no natural immunity is produced in the calf. The calf becomes persistently infected (PI), and produces large numbers of the virus for the remainder of its life. The calf may display a normal appearance with immunosuppression or may experience acute death, poor performance, or mucosal disease.

Texas stakeholders have indicated interest in addressing the disposition of known BVDV-PI animals. The TAHC convened a group of stakeholders to discuss the negative implications of the disease on the Texas cattle industry. Stakeholder groups represented at the meeting included Texas Southwest Cattle Raisers Association (TSCRA), Texas Cattle Feeder Association

(TCFA), Livestock Marketing Association (LMA), Independent Cattlemen's Association (ICA), Texas Farm Bureau (TFB), Texas Association of Dairymen (TAD), Texas A&M AgriLife, USDA, and Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL).

The commission may develop rules necessary to control significant disease risks. BVDV adversely affects both health and productivity. The losses due to transient infection are diarrhea, decreased milk production, reproductive disorders, increased occurrence of other diseases, and death. The losses from fetal infection include abortions; congenital defects; weak and abnormally small calves; unthrifty, persistently infected (PI) animals; and death among PI animals. Additionally, PI animals serve as a continuous reservoir of virus exposing pen mates and adjacent cattle to BVD virus. To provide Texas cattle some mitigation from the risk of exposure to PI cattle, Chapter 44, entitled "Bovine Viral Diarrhea" is being added.

HOW THE SECTIONS WILL FUNCTION:

Section 44.1 is for definitions used in this chapter and contains the following definitions: (1) Bovine Viral Diarrhea (BVD); (2) Bovine Viral Diarrhea Virus Persistently Infected (BVDV-PI) cattle; (3) BVDV Retest; (4) Cattle; (5) Commission.

Section 44.2 contains the primary element of a BVDV Program. Subsection (a) provides that BVDV-PI cattle are restricted from sale unless a potential buyer is notified in writing on or before the time of sale that the cattle are persistently infected.

Subsection (b) provides that cattle that originally test positive but later are determined by confirmatory test to be transiently infected, only, are not subject to the disclosure requirements of this rule.

Subsection (c) provides that the Commission will establish a BVDV program review working group with the interested stakeholders that will meet on an annual basis to determine the need for enhanced rules or continuation of current rules.

FISCAL NOTE

Mrs. Larissa Schmidt, Chief of Staff, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government because of enforcing or administering the rules.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

The 30-day comment period ended October 28, 2019.

During this period, TAHC received rule comments from the Texas and Southwestern Cattle Raisers Association (TSCRA) and four individuals. Of the five comments received, and to the extent the TAHC could determine, one commenter opposed adoption, three commenters supported adoption, and one commenter did not indicate support or opposition. A summary of comments relating to the rules and TAHC's responses follows:

Comment: One commenter stated animals that are BVDV positive must be reported as tested by veterinarians and a follow-up mechanism is needed so a buyer can determine the seller knowingly disposed of a BVDV persistently infected animal.

Response: TAHC will take the recommendation under advisement for future rulemaking, if necessary. The rule requires the seller of a known BVDV-PI animal to notify the buyer of the persistent infection on or before the time of sale. The TAHC will not

be involved in testing and test results will not be reported to the TAHC. No changes were made as a result of the comment.

Comment: One commenter recommended that animals tested utilizing a pooled sample should sale with a status of "from a test-positive pool/group" or from a "test-negative pool/group".

Response: TAHC will take the recommendation under advisement for future rulemaking, if necessary. The rule as published requires the seller of a known BVDV-PI animal to notify the buyer of the persistent infection on or before the time of sale. This requirement applies to all animals in a pooled sample unless an animal from the pooled sample is individually BVDV retested and the retest results are negative. No changes were made as a result of the comment.

Comment: One commenter was concerned the rule creates a state policy that sellers shall not sell BVDV-PI cattle, even unknowingly, and that requiring written disclosure on the day of sale is going to place an undue burden on the local commission company. The individual commented that it should be sufficient if the auctioneer announces the BVDV-PI status.

Response: The commission disagrees with the comment and responds that notification is required for cattle with positive results on a BVDV antigen detection test that are not retested, or that have a positive result on a BVDV retest. If the owner has not BVDV tested the cattle, the status is unknown. The rule does not require testing, it requires disclosure of BVDV test-positive animals. However, TAHC has no issue with including language regarding a seller that knowingly sells BVDV-PI animals in the rule if it helps clarify the concerns of the regulated community and has made the changes accordingly.

Regarding the written disclosure concerns, the TAHC agrees a commission merchant or other person acting as an agent of the seller should announce the BVDV-PI status prior to the sale of any known positive animal and this verbal announcement is sufficient for prospective buyers. However, the agency also believes, given the common practice of purchasing multiple animals and commingling animals, that the seller's agent must share the written notification with the ultimate buyer of the BVDV-PI animal. No changes were made as a result of the comment.

Comment: One commenter asked for additional information regarding the required forms of animal identification and whether pooled samples for PCR or Virus Isolation are an acceptable negative test, and, if so, the maximum number of samples that can be pooled together for a test.

Response: The commenter will be advised that this rule does not require identification; however, pursuant to existing 4 TAC §43.2 and §50.3, certain cattle are required to have TAHC approved official permanent identification. Pooled ELISA and PRC samples are acceptable tests and the sample submitter should follow the test label directions or contact the testing laboratory directly for guidance regarding the maximum number of samples that can be submitted for a pooled test. This will be addressed directly with the individual commenter and other producers and organizations as part of stakeholder outreach. No changes were made as a result of the comment.

Comment: The Texas and Southwestern Cattle Raisers Association commented that the rule simply requires cattle producers to provide written disclosure to a purchase of an animal that is determined to be persistently infected with BVD. This improvement will allow cattle producers to make well-informed decisions

and reduces the risk of unintentionally exposing cattle to BVD, especially during pregnancy.

Response: TAHC respectfully agrees. No changes were made as a result of the comment.

STATUTORY AUTHORITY

The new §44.1 and §44.2 within Chapter 44 are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.046, entitled "Rules" "[t]he commission may adopt rules as necessary for the administration and enforcement of this chapter."

Pursuant to §161.112, entitled "Rules" the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

The adopted rules do not affect other sections or codes.

§44.1. Definitions.

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

(1) Bovine Viral Diarrhea (BVD) - Bovine viral diarrhea is a viral disease of cattle that is caused by the bovine viral diarrhea virus (BVDV).

(2) BVDV Persistently Infected (BVDV-PI) Cattle--Any cattle with positive results on a BVDV antigen detection test (e.g., ELISA [enzyme-linked immunosorbent assay], PCR [polymerase chain reaction], or BVDV immunohistochemistry [IHC]) that either are not retested, or that have a positive result on a BVDV retest.

(3) BVDV Retest--A subsequent test for BVDV using an antigen detection test (e.g., ELISA [enzyme-linked immunosorbent assay], PCR [polymerase chain reaction], or BVDV immunohistochemistry [IHC]).

(4) Cattle--All dairy and beef animals (genus *Bos*).

(5) Commission--The Texas Animal Health Commission.

§44.2. General Requirements.

(a) A seller that knowingly sells BVDV Persistently Infected Cattle must disclose the Bovine Viral Diarrhea Virus Persistently Infected status in writing to the buyer prior to or at the time of sale.

(b) Cattle that initially test positive to a BVDV antigen detection test may be administered a BVDV retest. If the retest results are negative, the cattle are considered to have been transiently infected (not persistently infected) and are not covered under this rule.

(c) The Commission shall establish a BVDV Program Review Working Group consisting of members from the cattle industry, veterinary profession, veterinary diagnostic laboratory, veterinary college, extension service and agency representatives. The working group shall annually review the BVDV control program and make recommendations to the Commission on amendments to program components or operation, and on whether or not the program should be continued.

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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Mary T. Luedeker

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0718

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC §16.13

The Texas Historical Commission (Commission) adopts new §16.13 of Title 13, Part 2, Chapter 16 of the Texas Administrative Code (TAC), relating to Historic Sites. The rule is adopted with changes to the proposed text published in the August 16, 2019, issue of the *Texas Register* (44 TexReg 4273) as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions and changes to more precisely reflect the procedures of the historic sites division (HSD). This rule will be republished.

The rule is in response to the passage of HB 1422 (for Texas Government Code §2175.909) that authorizes agencies with curatorial collections and an officially adopted deaccession policy to sell deaccessioned items under the State Surplus Property program. It requires that all proceeds from the sale of deaccessioned collection items be deposited to a dedicated agency account "for the care and preservation of the agency's qualifying collection."

HSD currently follows the deaccession policy outlined in the HSD Collections Management Policy and 13 TAC §29.5, *Disposition of State Associated Collections*. HSD staff are seeking to formalize the provisions of Texas Government Code §2175.909 as they relate specifically to the final disposition of deaccessioned historic furnishing and fine arts collections managed by HSD.

There were no comments received during the posting period.

Section 16.13 of TAC Title 13, Part 2, Chapter 16, relating to Historic Sites, is adopted under the authority of Texas Government Code §442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §442.106, which allows the Commission to operate or grant contracts to operate concessions on the grounds of historic sites; Texas Government Code §442.072(c), which allows the commission to enter into agreements; and Texas Government Code §§442.101(a), 442.101(b), and 442.101(c), which allow the Commission to adopt policies and procedures by rule to contract for services necessary to carry out its responsibilities regarding historic sites.

Texas Government Code §§442.072(c), 442.101(a), 442.101(b), 442.101(c), and 442.106 allow the commission to contract for services, and specifically for concessions, necessary to carry out its responsibilities regarding historic sites. No other statutes, articles, or codes are affected by this new rule.

§16.13. *Management of Collections.*

(a) **Ownership.** The Commission is responsible for the management of archeological, archival, architectural, historic furnishing, and fine arts collections associated with historic sites overseen by the Commission. The Commission is granted authority over these collections by this section and §29.7 of this title (relating to State Associated Collections).

(b) **Governance.** Statutory and administrative authority over state-owned collections that are managed by the Commission is established in Texas Natural Resources Code §§191.051, 191.058, 191.091, and 191.092; Texas Government Code §§442.007, 442.075, and 2175.909; and in Chapters 26 and 29 of the Texas Administrative Code. Operational and procedural requirements related to the care and management of state-owned collections overseen by the Commission are outlined in the Commission's Collections Management Policy (CMP).

(c) **Deaccessioning.** The Commission recognizes the special responsibility associated with the receipt and maintenance of objects of cultural, historical, and scientific significance in the public trust. The decision to deaccession state-associated held-in-trust objects and collections is the responsibility of the Commission and is governed by this section and §26.5 of this title (relating to Antiquities Advisory Board).

(d) **Final disposition of deaccessioned collections.** Following confirmation that a collection object is not subject to any conditions established at the time of acquisition that may affect its disposition and that there is sufficient documentation to assure clear title to the object, a deaccessioned collection object will be disposed of in accordance with this section. All efforts will be made to contact the original donor to provide notification of pending collections disposition. In accordance with U.S. income tax policy, the Commission is not able to return deaccessioned objects to their original donors or donors' estates.

(1) **Transfer or exchange.** A deaccessioned collection object may be offered for transfer or exchange to another public institution within the State of Texas. Any such transfer or exchange will occur only on the written understanding that the object must remain within the public domain for a period of ten years. Recipient institutions will incur all transportation costs, unless otherwise agreed, and are expected to provide appropriate preservation and/or exhibit facilities.

(A) **Qualified institution.** Recipient institutions must have an established collections policy. The collection object(s) being transferred should fall within the recipient institution's scope of collections and the objects should be candidates for exhibition or study within the institution.

(B) **Object title.** Title to deaccessioned objects will be transferred along with the deaccessioned collection(s) to the recipient institution. In the event that the recipient institution is unwilling or unable to appropriately maintain the transferred collection(s) for the requisite ten years, title will revert back to the Commission and the Commission will assume responsibility for managing the objects' final disposition.

(2) **Sale.** If a deaccessioned collection object cannot be transferred or exchanged, it may be sold as a means of disposition, preferably by public auction, in consultation with the Texas Facilities Commission and following the provisions outlined by Texas Govern-

ment Code §2175.909 (relating to Sale of Certain Historic Property; Proceeds of Sale).

(A) **Coordination with the Texas Facilities Commission (TFC).** The Commission will work with the TFC to ensure that all sales of deaccessioned collection items will be most advantageous to the state under the circumstances. The Commission will also provide the TFC all documentation necessary for verification that the deaccession of the item is appropriate under the Commission's written policy governing the care and preservation of the collection. The Commission will report any sale to the TFC, including a description of the property disposed of, the reasons for disposal, the price paid for the property disposed of, and the recipient of the property disposed of.

(B) **Vendor qualifications.** When selecting a vendor to sell the deaccessioned collection(s) by competitive bid, auction, or direct sale to the public, the Commission must publish a Request for Qualifications (RFQ) to ensure that the sale is conducted by a qualified vendor. Selection of the vendor should be the most advantageous to the state under the circumstances.

(C) **Appraisal.** Objects whose estimated fair market value could potentially exceed \$500.00 must be appraised by a qualified, independent appraiser. Objects whose estimated fair market value could potentially exceed \$25,000.00 must be appraised by two separate qualified, independent appraisers.

(D) **Dedicated account.** The Commission shall create a dedicated fund in the general revenue fund for the deposit of any money resulting from the sale of deaccessioned items. The Commission must ensure that money in the fund is appropriated only for the purposes prescribed by Texas Government Code §2175.909(f) including the care and preservation of the Commission's qualifying collection.

(3) **Assignment to other historic site operations.** If a deaccessioned collection object cannot be transferred or exchanged, it may also be made available for other operational purposes within the Commission. The deaccessioned collection object may be used for interpretive programming, exhibition props, restoration of another collection item, or similar purposes.

(4) **Destruction.** Disposal of a collection object by destruction is the final recourse and is permitted under the following circumstances:

(A) all reasonable efforts were made to dispose of the object through other means;

(B) the object is environmentally hazardous and poses a danger to other collections or staff; and

(C) the object has no residual heritage, preservation, or market value to the Commission.

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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Mark Wolfe

Executive Director

Texas Historical Commission

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For further information, please call: (512) 463-7948



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 60, Subchapter B, §60.23; Subchapter D, §60.40, and Subchapter I, §60.306; new rule Subchapter D, §60.36; and the repeal of Subchapter I, §60.302, regarding the Procedural Rules of the Commission and the Department, without changes to the proposed text as published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6178). The adopted changes are referred to herein as "adopted rules." The adopted rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 60 implement Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation, and Chapter 53, Consequences of Criminal Conviction.

The adopted rules implement House Bill (HB) 1342, 86th Legislature, Regular Session (2019). HB 1342 amends Texas Occupations Code, Chapter 51, to provide the Texas Commission of Licensing and Regulation (Commission) and the Executive Director of the agency the authority to issue restricted licenses to persons within the Department's Air Conditioning and Refrigeration and Electricians programs. Further, HB 1342 amends Chapter 51 to state that a person whose license has been revoked for failure to pay an administrative penalty is eligible to reapply once the penalty has been paid in full, or the person is paying the administrative penalty under a payment plan with the Department and is in good standing with respect to that plan.

The adopted rules also implement HB 1899, 86th Legislature, Regular Session (2019). HB 1899 amends Texas Occupations Code, Chapter 108, to require mandatory denial or revocation of licensure for certain health care professionals.

The adopted rules also make several non-substantive organizational and clean-up changes.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §60.23 to include the addition of subsection (b)(4), which implements Texas Occupations Code §51.357, as enacted by HB 1342, §2. This addition makes it clear that the Commission and the Executive Director have the authority to issue restricted licenses in accordance with Texas Occupations Code, Chapter 51, Subchapter G.

The adopted rules amend §60.23(b)(5) to better align the rule text with the requirements of Texas Occupations Code, Chapter 53, relating to the consequences of criminal conviction. The adopted changes include a reference to deferred adjudication missing from the existing rule and replace the reference to offenses carrying the possibility of confinement in a state or federal facility with "an offense identified in Texas Occupations Code, §53.021."

The remaining adopted amendments to §60.23 are non-substantive and represent organizational or clean-up changes.

The adopted rules add new §60.36 (a) - (c) to implement HB 1342, §1, by stating that a person whose license has been revoked for failure to pay an administrative penalty may reapply once the person has either paid the penalty in full, or is paying the administrative penalty under a payment plan with the Department and is in good standing with respect to that plan. The adopted new subsection (c) provides a definition for "good standing" for purposes of the section.

The adopted rules add new §60.36(d) which is not a new provision but has been moved to the new rule from its former place at §60.40(c)(1). This change was made for organizational purposes and is not substantive.

The adopted rules add new §60.36(e) to implement Texas Occupations Code §108.054 and §108.055, as enacted by HB 1899, §8. New §60.36(e) simply states that a health care professional subject to mandatory denial or revocation by Texas Occupations Code §108.052 or §108.053, respectively, may reapply or seek reinstatement pursuant to Texas Occupations Code, Chapter 108, Subchapter B.

The adopted rules amend §60.40 to include the repeal of subsection (c). As mentioned above, the adopted rules move subsection (c)(1) of this rule to new adopted §60.36. Subsection (c)(2) has been removed, as it is no longer necessary in light of adopted §60.36.

The repeal of §60.302 is adopted because the rule is redundant in light of the adopted changes to §60.306, summarized below.

The adopted changes to §60.306(a) and (b) implement Texas Occupations Code §51.358(c) and (d), as enacted by HB 1342, §2. Sections 51.358(c) and (d) create a new type of contested case under the Administrative Procedure Act. Section 51.358(c) states that upon the expiration of a restricted license, there is a rebuttable presumption that the applicant is entitled to an unrestricted license. In order to retain restrictions on a license upon renewal, the Department must determine, pursuant to §51.358(d), either that: the applicant failed to comply with any condition imposed on the license, the applicant is not in good standing with the Department, or issuing an unrestricted license to the applicant would result in an increased risk of harm to any person or property. The adopted changes to §60.306(a) and (b) include a reference to this new type of contested case.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 25, 2019, issue of the *Texas Register* (44 TexReg 6178). The deadline for public comments was November 25, 2019. The Department received comments from 11 interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter stated opposition to the proposed rules, stating, "If a person is competent at his craft he would not need a restricted license. It is not fair to the journeymen and apprentices that have completed the training to become competent craftsmen and would be a liability to the TDLR I think in the long run."

Department Response: The Department appreciates the comment, but believes it reflects a misunderstanding of the proposed rules' intent. House Bill 1342 would not allow the Commission or Department to issue a restricted license to a person who does not possess the requisite skill, experience, and competence to

hold an electrical or air conditioning and refrigeration license. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter stated opposition to the proposed rules, claiming that the provisions regarding restricted licenses will add liability exposure for small businesses. The commenter did not elaborate further.

Department Response: The Department appreciates the comment. The proposed rules simply implement the restricted license provisions of HB 1342 and do not reflect a policy decision by the Commission or Department. It is not possible for the Department to determine whether or in what form the implementation of HB 1342 would result in increased liability for any business. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter stated opposition to the proposed rules, claiming that "Up to this point most people think that a person with a license has been vetted by the state and may allow them to do work thinking they are trustworthy and free of criminal convictions."

Department Response: The Department appreciates the comment. However, the Department commonly issues licenses to persons with some degree of criminal history if the criminal offense is unrelated to the particular profession, or if the Department finds that the person has been rehabilitated. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter asked whether a person with no education or training in the field would be eligible for a restricted license.

Department Response: No. A person who has not met all of the conditions for licensure will not be eligible for a restricted license. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter stated approval of the proposed rules. The commenter stated that he or she was from outside of Texas and was not eligible for a license via reciprocity. The commenter said that the restricted license would help him or her work on electrical projects in Texas when needed.

Department Response: The Department appreciates the comment, but believes it reflects a misunderstanding of the proposed rules' intent. House Bill 1342 would not allow the Commission or Department to issue a restricted license to a person who does not meet the requirements for licensure in Texas. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter expressed approval of the proposed rules, and thanked the Department for the opportunity to share his opinion.

Department Response: The Department appreciates the comment. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter asked the Department to state the purpose of a restricted license, to provide examples of persons who would need a restricted license, and to give examples of potential restrictions.

Department Response: The Department responded to the commenter directly. The Department pointed the commenter to the

provisions of HB 1342, which provide the information sought by the commenter. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter stated opposition to the proposed rules, stating that they are "accommodation to the underachievers."

Department Response: The Department appreciates the comment. The proposed rules simply provide an implementation of HB 1342 and are not intended to accommodate persons who do not possess the qualifications for licensure. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter asked for information on how to become a testing center.

Department Response: The Department responded to the commenter directly. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter asked whether the proposed rules would be applicable to registered air conditioning and refrigeration technicians.

Department Response: Yes. The proposed rules would allow the Commission or Executive Director to issue a restricted license to a registered air conditioning and refrigeration technician. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One commenter inquired about the application requirements for a restricted license, and asked what scope of work a restricted license would cover.

Department Response: There are no application requirements for a restricted license. A person seeking a particular license, or renewal thereof, would apply in the regular fashion. In the event that the Commission or Executive Director saw fit to issue the person a restricted license instead of denying the application, the Commission or Executive Director would place reasonable restrictions on the license. The restrictions could, in theory, limit the scope or location of the license holder's practice. See Texas Occupations Code §51.357. The Department did not make any changes to the proposed rules in response to this comment.

COMMISSION ACTION

The Department staff recommended that the Commission adopt the proposed rules as published in the *Texas Register* without changes. At its meeting on December 20, 2019, the Commission adopted the proposed rules without changes as recommended.

SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.23

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 202, 401, 402, 1302, and 1305. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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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 D. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

16 TAC §60.36, §60.40

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 202, 401, 402, 1302, and 1305. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. CONTESTED CASES

16 TAC §60.302

The adopted repeal is adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51, 202, 401, 402, 1302, and 1305. No other statutes, articles, or codes are affected by the adopted repeal

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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16 TAC §60.306

The adopted rule is adopted under Texas Occupations Code, Chapter 51, which authorizes the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51, 202, 401, 402, 1302, and 1305. No other statutes, articles, or codes are affected by the adopted rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 65. BOILERS

SUBCHAPTER C. BOILER REGISTRATION AND CERTIFICATE OF OPERATION-- REQUIREMENTS

16 TAC §65.12

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 65, Subchapter C, §65.12, regarding the Boilers Program, without changes to the proposed text as published in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4925). The adopted changes are referred to herein as "adopted rules." The adopted rules will not be published.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 65 implement Texas Health and Safety Code, Chapter 755, Boilers.

The adopted amendment implements §6.002 of House Bill (HB) 2847, Article 6, 86th Legislature, Regular Session (2019), which amends Health and Safety Code §755.029(c), removing the requirement to post boiler certificates of operation under glass. The adopted rules are necessary to implement the statutory change.

Amendments to §65.2 and §65.64, relating to extensions of the interval between internal inspections of boilers, were also proposed in this rulemaking. Similar amendments to §65.2 and §65.64 were first proposed and published in the *Texas Register* for public comment on October 5, 2018. Following the comment period and the receipt of written and oral comments, the Board of Boiler Rules (Board), at its December 5, 2018, meeting deliberated and recommended that the amendments related to extensions be returned to the Board's task group.

After reconsideration and modification, amendments to §65.2 and §65.64, and the amendment to §65.12, were presented to the Board at its August 19, 2019, meeting. The Board voted to propose the rules without changes, as they were published in the *Texas Register* on September 13, 2019. Subsequent to the public comment period and the receipt of written and oral comments, at its November 7, 2019, meeting the Board discussed the rules and voted to adopt only the legislative implementation change to §65.12, and to again return the amendments to §65.2 and §65.64, related to extensions, to the task group for further review.

The Commission considered the proposed rules at its December 20, 2019, meeting and agreed that the amendment to §65.12 should be adopted but that the amendments to §65.2 and §65.64 should not be adopted. Therefore, the proposed amendments to §65.2 and §65.64, relating to extensions of the interval between internal inspections of boilers, are not adopted in this rulemaking and will be withdrawn.

SECTION-BY-SECTION SUMMARY

The adopted amendment to §65.12 removes the obligation to post a boiler's certificate of operation under glass, to implement the HB 2847 statutory change.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4925). The deadline for public comments was October 14, 2019. The Department received comments from three interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: Xcel Energy commented that the new definitions for "standby," "operation," and "out of service" are adequate and accurate but proposes that the requirement in §65.64 to report outages greater than 10 days be rejected by the board. The commenter states that the requirement will be burdensome and will bring no value to the owner, AIAs, and TDLR. Praxair Inc. commented that the notification to the state and to the authorized inspection agency when a boiler is shut down for a period exceeding 10 days is too restrictive for plants that have regular shutdowns for general process maintenance not associated with the boiler. The commenter requests that the notification to the Department be required only after 30 days of shutdown.

Department Response: In response to this and other comments and the decision of the Board and the Commission, the Department is withdrawing the proposed amendments to §65.2 and §65.64 from this rulemaking. Amendments to these sections may be the subject of future rulemaking proceedings in which the Department will respond to all comments received in relation to these sections.

Comment: The Texas Chemical Council and the Texas Oil and Gas Association, commenting jointly, commented in support of clarifying the eligibility for an extended interval between internal inspections but requested changes to the proposed text in consideration of the impact to refining and petrochemical industry operations:

--Remove the italicized text from the definition of "out of service": "A boiler is out of service when it is not in operation and it is not designated as in standby." Also modify the definition of "standby" to allow the boiler to be out of service when there is an unplanned shutdown and no repairs are being performed, to read "A boiler is in standby when the owner or operator has designated it as in standby and it is in operation at low fire or it is designated as in standby and out of service with no repairs."

--Increase the amount of time from a maximum of 10 consecutive days to a maximum of 30 consecutive days that a boiler can be out of service before notification is required to maintain eligibility for an extension, including times when one or more opportunistic repairs are being made. Amend the rule to not require continuous water treatment when a boiler is designated as in standby and out of service with no repairs. Clarify at what point the time period for notification begins if a boiler is in standby before an opportunistic repair begins. Clarify which types of repairs may be made for which eligibility for an extension will be preserved if the time out of service will exceed 10 days.

Department Response: In response to this and other comments and the decision of the Board and the Commission, the Department is withdrawing the proposed amendments to §65.2 and §65.64 from this rulemaking. Amendments to these sections may be the subject of future rulemaking proceedings in which the Department will respond to all comments received in relation to these sections.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Board of Boiler Rules met on November 7, 2019, to discuss the proposed rules and the public comments received. The Board recommended adopting the proposed rules with the exception of the amendments to Subchapter A, §65.2 and Subchapter I, §65.64. The Commission considered the proposed rules at its December 20, 2019, meeting and agreed that, as recommended by the Board, the amendment to §65.12 should be adopted but that the amendments to §65.2 and §65.64 should not be adopted.

STATUTORY AUTHORITY

The rule is adopted under Texas Occupations Code Chapter 51 and Texas Health and Safety Code Chapter 755, which authorize the Commission, 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 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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Brad Bowman

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8129



CHAPTER 73. ELECTRICIANS

16 TAC §73.71

The Texas Commission of Licensing and Regulation (Commission) adopts a new rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.71, regarding the Electricians program, without changes to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6651). The adopted changes are referred to as the "adopted rule." The adopted rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 73, implement Texas Occupations Code, Chapter 1305, Electricians.

The adopted rule is necessary to implement House Bill (HB) 1342, 86th Legislature, Regular Session (2019). Section 2 of HB 1342 authorizes the Texas Commission of Licensing and Regulation ("Commission") and the Department's Executive Director to issue a restricted license to a person as an alternative to denying, revoking, suspending, or refusing to issue a license. Section 2 also authorizes the Department to impose reasonable conditions on a holder of a restricted license. Notably, a restricted license may only be issued to applicants within the Department's Air Conditioning and Refrigeration (Texas Occupations Code, Chapter 1302) and Electricians (Texas Occupations Code, Chapter 1305) programs.

The adopted rule requires the holder of a restricted license to comply with the conditions imposed upon the license by the Commission or Executive Director. Additionally, the adopted rule requires a licensee to use reasonable care to ensure that a person under his or her supervision who holds a restricted license complies with the conditions placed on that license. Lastly, the adopted rule requires the holder of a restricted license to inform his or her employer of the conditions placed on the license before performing any work.

SECTION-BY-SECTION SUMMARY

The adopted rule contains three subsections. Adopted rule §73.71(a) requires the holder of a restricted license to comply with the conditions imposed upon the license by the Commission or Executive Director. A holder of a restricted license who does not comply with the terms of a restricted license may be subject to an administrative penalty or other sanction as allowed by Texas Occupations Code, Chapter 51.

Adopted rule §73.71(b) requires a licensee to use reasonable care to ensure that a person under his or her supervision who holds a restricted license complies with the conditions placed on that license. This subsection simply restates Texas Occupations Code §51.357(d) as enacted by HB 1342.

Adopted rule §73.71(c) requires the holder of a restricted license to inform his or her employer of the conditions placed on the license before performing any work under that license. Potential conditions that could be imposed by the Commission or Executive Director pursuant to Texas Occupations Code §51.357(b) are that the license holder be subject to close supervision, or be allowed to work in only nonresidential settings. Because HB 1342 and adopted rule §73.71(b) require supervisors to use care to ensure that persons under their supervision with restricted licenses comply with the terms of licensure, it is reasonable that licensees be required to inform their employers of those conditions.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6651). The deadline for public comments was December 9, 2019. The Department received comments from 15 interested parties on the proposed rule during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter stated opposition to the proposed rule, stating, "If a person is competent at his craft he would not need a restricted license. It is not fair to the journeymen and apprentices that have completed the training to become competent craftsmen and would be a liability to the TDLR I think in the long run."

Department Response: The Department appreciates the comment, but believes it reflects a misunderstanding of the proposed rule's intent. House Bill 1342 would not allow the Commission or Department to issue a restricted license to a person who does not possess the requisite skill, experience, and competence to hold an electrical license. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, claiming that the provisions regarding restricted licenses will add liability exposure for small businesses. The commenter did not elaborate further.

Department Response: The Department appreciates the comment. The proposed rule simply implements the restricted license provisions of HB 1342 and does not reflect a policy decision by the Commission or Department. It is not possible for the Department to determine whether or in what form the implementation of HB 1342 would result in increased liability for any business. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, claiming that "Up to this point most people think that a person with a license has been vetted by the state and may allow them to do work thinking they are trustworthy and free of criminal convictions."

Department Response: The Department appreciates the comment. However, persons with some degree of criminal history are eligible for licensure if the criminal offense is unrelated to the particular profession, or if the Department finds that the person has been rehabilitated. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked whether a person with no education or training in the field would be eligible for a restricted license.

Department Response: No. A person who has not met all of the conditions for licensure will not be eligible for a restricted license. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated approval of the proposed rule. The commenter stated that he or she was from outside of Texas and was not eligible for a license via reciprocity. The commenter said that the restricted license would help him or her work on electrical projects in Texas when needed.

Department Response: The Department appreciates the comment, but believes it reflects a misunderstanding of the proposed rule's intent. House Bill 1342 would not allow the Commission or Department to issue a restricted license to a person who does not meet the requirements for licensure in Texas. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter expressed approval of the proposed rule and thanked the Department for the opportunity to share his opinion.

Department Response: The Department appreciates the comment. The Department did not make any changes to the proposed rule in response to this comment.

Comment: Two commenters asked the Department to state the purpose of a restricted license, to provide examples of persons who would need a restricted license, and to give examples of potential restrictions.

Department Response: The Department responded to the commenter directly. The Department pointed the commenter to the provisions of HB 1342, which provide the information sought by the commenter. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, stating that the rule is an "accommodation to the under-achievers."

Department Response: The Department appreciates the comment. The proposed rule simply provides an implementation of HB 1342 and is not intended to accommodate persons who do not possess the qualifications for licensure. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked for information on how to become a testing center.

Department Response: The Department responded to the commenter directly. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked whether a restricted license would be available for electrical contractors, and how monitoring of contractors would work in practice.

Department Response: HB 1342 authorizes the issuance of a restricted license to any licensee within the Electricians program; therefore, an electrical contractor could potentially be issued a restricted license. If a contractor were to be issued a restricted license, the Commission or Executive Director would have to be certain that the contractor could be adequately monitored. In theory, the Commission or Executive Director could require a restricted electrical contractor to report regularly about the company's operations, and/or to restrict the company's electrical work to industrial or commercial settings. The Department did

not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, stating that "It is becoming to (sic) hard for contractors to police the rules that the state mandates to contractors."

Department Response: The Department appreciates the comment. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter expressed support for the proposed rule, stating that it "would allow an increase of licensees to become legal and therefore the safety of our industry and community would benefit from this proposed rule."

Department Response: The Department appreciates the comment. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter expressed opposition to the inclusion of proposed subsection (b). The commenter characterized the subsection's "reasonable care" standard as "vague, arbitrary, and capricious." The commenter further equated subsection (b) with a tax on air conditioning and refrigeration contractors.

Department Response: Proposed rule 73.71(b) simply implements Texas Occupations Code §51.357(d), which was added by Section 2 of HB 1342. Section 51.357(d) states, "A license holder who supervises the holder of a restricted license shall use reasonable care to ensure that the license holder complies with any condition imposed under this section." We disagree with the commenter's characterization of the proposed rule. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated disagreement with the proposed rule. Regarding proposed 73.71(a), the commenter asked how the Department would be able to monitor a licensee's compliance with the conditions placed on a restricted license. Regarding proposed 73.71(b), the commenter stated that the proposed rule would place an undue burden on electrical contractors. Regarding proposed 73.71(c), the commenter expressed belief that restricted licensees would not be forthcoming in informing employers of the restrictions on their license.

Department Response: The Department appreciates the comment. Regarding the Department's monitoring of compliance with the conditions of a restricted license, we do not anticipate that the Department's electrical inspectors will be charged with monitoring all restricted licensees. Rather, we expect that reporting requirements will be imposed on restricted licensees. Regarding the commenter's concern about proposed 73.71(b), we reiterate that the subsection simply implements Texas Occupations Code §51.357(d), which was added by Section 2 of HB 1342. Section 51.357(d) states, "A license holder who supervises the holder of a restricted license shall use reasonable care to ensure that the license holder complies with any condition imposed under this section." Regarding the commenter's concern about proposed 73.71(c), the purpose of the proposed subsection is to provide a disincentive for restricted licensees to be less than forthcoming about the conditions attached to their license. The Department did not make any changes to the proposed rule in response to this comment.

COMMISSION ACTION

At its meeting on December 20, 2019, the Commission adopted the proposed rule without changes.

STATUTORY AUTHORITY

The new rule is adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Commission, 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. Texas Occupations Code §51.357, as enacted by HB 1342, also provides a basis for the adopted rule.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adopted rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671



CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

16 TAC §75.75

The Texas Commission of Licensing and Regulation (Commission) adopts a new rule at 16 Texas Administrative Code (TAC), Chapter 75, §75.75, regarding the Air Conditioning and Refrigeration program, without changes to the proposed text as published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6653). The adopted change is referred to as the "adopted rule." The adopted rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC Chapter 75 implement Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors.

The adopted rule is necessary to implement House Bill (HB) 1342, 86th Legislature, Regular Session (2019). Section 2 of HB 1342 authorizes the Texas Commission of Licensing and Regulation ("Commission") and the Department's Executive Director to issue a restricted license to a person as an alternative to denying, revoking, suspending, or refusing to issue a license. Section 2 also authorizes the Department to impose reasonable conditions on a holder of a restricted license. Notably, a restricted license may only be issued to applicants within the Department's Air Conditioning and Refrigeration (Texas Occupations Code, Chapter 1302) and Electricians (Texas Occupations Code, Chapter 1305) programs.

The adopted rule requires the holder of a restricted license to comply with the conditions imposed upon the license by the Commission or Executive Director. Additionally, the adopted rule requires a licensee to use reasonable care to ensure that a person under his or her supervision who holds a restricted license complies with the conditions placed on that license.

Lastly, the adopted rule requires the holder of a restricted license to inform his or her employer of the conditions placed on the license before performing any work.

SECTION-BY-SECTION SUMMARY

The adopted rule contains three subsections. Adopted rule §75.75(a) requires the holder of a restricted license to comply with the conditions imposed upon the license by the Commission or Executive Director. A holder of a restricted license who does not comply with the terms of a restricted license may be subject to an administrative penalty or other sanction as allowed by Texas Occupations Code, Chapter 51.

Adopted rule §75.75(b) requires a licensee to use reasonable care to ensure that a person under his or her supervision who holds a restricted license complies with the conditions placed on that license. This subsection simply restates Texas Occupations Code §51.357(d) as enacted by HB 1342.

Adopted rule §75.75(c) requires the holder of a restricted license to inform his or her employer of the conditions placed on the license before performing any work under that license. Potential conditions that could be imposed by the Commission or Executive Director pursuant to Texas Occupations Code §51.357(b) are that the license holder be subject to close supervision, or be allowed to work in only nonresidential settings. Because HB 1342 and adopted rule §75.75(b) require supervisors to use care to ensure that persons under their supervision with restricted licenses comply with the terms of licensure, it is reasonable that licensees be required to inform their employers of those conditions.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the November 8, 2019, issue of the *Texas Register* (44 TexReg 6653). The deadline for public comments was December 9, 2019. The Department received comments from 13 interested parties on the proposed rule during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter stated opposition to the proposed rule, stating, "If a person is competent at his craft he would not need a restricted license. It is not fair to the journeymen and apprentices that have completed the training to become competent craftsmen and would be a liability to the TDLR I think in the long run."

Department Response: The Department appreciates the comment, but believes it reflects a misunderstanding of the proposed rule's intent. House Bill 1342 would not allow the Commission or Department to issue a restricted license to a person who does not possess the requisite skill, experience, and competence to hold an electrical or air conditioning and refrigeration license. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, claiming that the provisions regarding restricted licenses will add liability exposure for small businesses. The commenter did not elaborate further.

Department Response: The Department appreciates the comment. The proposed rule simply implements the restricted license provisions of HB 1342 and does not reflect a policy decision by the Commission or Department. It is not possible for the Department to determine whether or in what form the imple-

mentation of HB 1342 would result in increased liability for any business. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, claiming that "Up to this point most people think that a person with a license has been vetted by the state and may allow them to do work thinking they are trustworthy and free of criminal convictions."

Department Response: The Department appreciates the comment. However, the Department commonly issues licenses to persons with some degree of criminal history if the criminal offense is unrelated to the particular profession, or if the Department finds that the person has been rehabilitated. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked whether a person with no education or training in the field would be eligible for a restricted license.

Department Response: No. A person who has not met all of the conditions for licensure will not be eligible for a restricted license. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated approval of the proposed rule. The commenter stated that he or she was from outside of Texas and was not eligible for a license via reciprocity. The commenter said that the restricted license would help him or her work on electrical projects in Texas when needed.

Department Response: The Department appreciates the comment, but believes it reflects a misunderstanding of the proposed rule's intent. House Bill 1342 would not allow the Commission or Department to issue a restricted license to a person who does not meet the requirements for licensure in Texas. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter expressed approval of the proposed rule and thanked the Department for the opportunity to share his opinion.

Department Response: The Department appreciates the comment. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked the Department to state the purpose of a restricted license, to provide examples of persons who would need a restricted license, and to give examples of potential restrictions.

Department Response: The Department responded to the commenter directly. The Department pointed the commenter to the provisions of HB 1342, which provide the information sought by the commenter. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter stated opposition to the proposed rule, stating that it is an "accommodation to the underachievers."

Department Response: The Department appreciates the comment. The proposed rule simply provides an implementation of HB 1342 is are not intended to accommodate persons who do not possess the qualifications for licensure. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked for information on how to become a testing center.

Department Response: The Department responded to the commenter directly. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked whether the proposed rule would be applicable to registered air conditioning and refrigeration technicians.

Department Response: Yes. The proposed rule would allow the Commission or Executive Director to issue a restricted license to a registered air conditioning and refrigeration technician. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter expressed opposition to the inclusion of proposed subsection (b). The commenter characterized the subsection's "reasonable care" standard as "vague, arbitrary, and capricious." The commenter further equated subsection (b) with a tax on air conditioning and refrigeration contractors.

Department Response: Rule 75.75(b) implements Texas Occupations Code §51.357(d), which was added by Section 2 of HB 1342. Section 51.357(d) states, "A license holder who supervises the holder of a restricted license shall use reasonable care to ensure that the license holder complies with any condition imposed under this section." We disagree with the commenter's characterization of the proposed rule. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter inquired about the application requirements for a restricted license, and asked what scope of work a restricted license would cover.

Department Response: There are no application requirements for a restricted license. A person seeking a particular license, or renewal thereof, would apply in the regular fashion. In the event that the Commission or Executive Director saw fit to issue the person a restricted license instead of denying the application, the Commission or Executive Director would place reasonable restrictions on the license. The restrictions could, in theory, limit the scope or location of the license holder's practice. See Texas Occupations Code §51.357. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter expressed confusion about the proposed rule and asked the Department for further information on the background of the proposed rule.

Department Response: The Department sent the commenter a link to HB 1342 and the House Research Organization analysis of the bill. The Department did not make any changes to the proposed rule in response to this comment.

COMMISSION ACTION

At its meeting on December 20, 2019, the Commission adopted the proposed new rule without changes.

STATUTORY AUTHORITY

The new rule is adopted under Texas Occupations Code, Chapters 51 and 1302, which authorize the Commission, 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. Texas Occupations Code §51.357, as enacted by HB 1342, also provides a basis for the adopted rule.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1302. No other statutes, articles, or codes are affected by the adopted rule.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-3671



CHAPTER 87. USED AUTOMOTIVE PARTS RECYCLERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 87, §§87.15, 87.44, 87.45, and 87.85; and adopts the repeal of existing §§87.24 - 87.26, and 87.46, regarding the Used Automotive Parts Recyclers program without changes to the proposed text as published in the October 4, 2019, issue of the *Texas Register* (44 TexReg 5691). The adopted changes are referred to as "adopted rules." The adopted rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 87 implement Texas Occupations Code, Chapter 2309, relating to Used Automotive Parts Recyclers (UAPR).

The adopted rules are necessary to implement House Bill (H.B.) 2847, Article 15, 86th Legislature, Regular Session (2019), which amended Chapter 2309, Occupations Code, by: (1) repealing the licensing requirement and fees for employees working at UAPR facilities; (2) repealing the provisions requiring risk-based inspections and fees for repeat violators of Chapter 2309, Occupations Code; and (3) increasing the periodic inspection time period to every four years.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §87.15 by removing reference to the UAPR employee license type.

The adopted rules repeal §87.24, which required a UAPR employee license for a person employed on a UAPR facility.

The adopted rules repeal §87.25, which established the licensing requirements for the issuance of a UAPR employee license.

The adopted rules repeal §87.26, which established the licensing renewal requirements for the issuance of a UAPR employee license.

The adopted rules amend §87.44 by removing reference to risk-based inspections.

The adopted rules amend §87.45 to increase the amount of time for periodic inspections by the Department to once every four years. The adopted rules also remove the risk-based inspection

requirement for repeat violations discovered during periodic inspections.

The adopted rules repeal §87.46, which required risk-based inspections for repeat violators of periodic inspections.

The adopted rules amend §87.85 to remove licensing fees associated with the UAPR employee license and the fee for a risk-based inspection.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 4, 2019, issue of the *Texas Register* (44 TexReg 5691). The deadline for public comments was November 4, 2019. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Used Automotive Parts Recycling Advisory Board met on November 13, 2019, to discuss the proposed rules and the public comments received. The Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* without changes. At its meeting on December 20, 2019, the Commission adopted the proposed rules without changes as recommended by the Board.

16 TAC §§87.15, 87.44, 87.45, 87.85

STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, Chapters 51 and 2309, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2309. No other statutes, articles, or codes are affected by the adopted rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 10, 2020.

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Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
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Proposal publication date: October 4, 2019
For further information, please call: (512) 463-3671



16 TAC §§87.24 - 87.26, 87.46

The repeals are adopted under Texas Occupations Code, Chapters 51 and 2309, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2309.

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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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671



CHAPTER 114. ORTHOTISTS AND PROSTHETISTS

16 TAC §§114.10, 114.20, 114.21, 114.23, 114.28, 114.50, 114.80, 114.90

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 114, §§114.10, 114.20, 114.21, 114.23, 114.50, 114.80, and 114.90, and the rule chapter heading, regarding the Orthotists and Prosthetists program, without changes to the proposed text as published in the October 4, 2019, issue of the *Texas Register* (44 TexReg 5694). These rules will not be republished.

The amendments to §114.28 regarding the Orthotists and Prosthetists program are adopted with changes to the proposed text as published in the October 4, 2019, issue of the *Texas Register* (44 TexReg 5694). This rule will be republished.

The adopted changes are referred to as "adopted rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 114 implement Texas Occupations Code, Chapter 605, Orthotists and Prosthetists.

The adopted rules implement House Bill (HB) 2847, Article 11, 86th Legislature, Regular Session (2019), which repeals §605.002(19), (20), (21), Definitions, and §605.259, technician registration, from the Occupations Code, eliminating the technician registration from the Orthotists and Prosthetists program. The registration of technicians was voluntary, and there was little demand for the credential, so eliminating it was supported by the Department and the professionals in this field. The adopted rules are necessary to remove all requirements in Chapter 114 that are related to the technician registration. Other amendments to the rule chapter title and citations to the orthotists and prosthetists statute are made for consistency with the statute, to remove unnecessary text, and a change in §114.50 improves a wording choice.

SECTION-BY-SECTION SUMMARY

The adopted amendment to the chapter title renames the chapter to be consistent with Occupations Code, Chapter 605, Orthotists and Prosthetists.

The adopted amendments to §114.10 remove unnecessary text, make a citation consistent with the statute, and remove the definitions of "registered orthotic technician," "registered prosthetic technician," and "registered prosthetic/orthotic technician" because these credentials will no longer exist. A definition for "technician" is added because technicians will continue to work for licensees in the Orthotists and Prosthetists program. The definitions within the section are renumbered accordingly.

The adopted amendments to §114.20 remove provisions related to disapproval of a technician registration application.

The adopted amendments to §114.21 remove the technician registration renewal period.

The adopted amendments to §114.23 remove unnecessary text.

The adopted amendments to §114.28 remove technician registration requirements and specify the scope of work technicians may perform under the direction of licensees in the Orthotists and Prosthetists program.

The adopted amendments to §114.50 remove the technician continuing education requirements and improve a wording choice.

The adopted amendments to §114.80 remove fees for technician registrations and renewals, and renumber the section accordingly.

The adopted amendments to §114.90 correct a citation to the statute.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 4, 2019, issue of the *Texas Register* (44 TexReg 5694). The deadline for public comments was November 4, 2019. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Orthotists and Prosthetists Advisory Board recommended the publication of the proposed rules at their September 12, 2019, meeting. At its meeting on December 20, 2019, the Commission adopted the proposed rules with the editorial change to §114.28(c) by adding the word "a" to correct a drafting error.

STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, Chapters 51 and 605, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 605. No other statutes, articles, or codes are affected by the adopted rules.

§114.28. Technician.

(a) A technician must be supervised by a licensed prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, or prosthetist/orthotist assistant.

(b) A licensed prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, or prosthetist/orthotist assistant

shall direct the activities of a technician and is responsible for the acts of the technician.

(c) A technician may fabricate, assemble, or service orthoses or prostheses only under the direction of a person licensed under this chapter and is not authorized to provide patient care to orthotic or prosthetic patients, including ancillary or assistant patient care services.

(d) Notwithstanding the supervision requirements in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

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 January 10, 2020.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3671



CHAPTER 117. MASSAGE THERAPY

The Texas Commission of Licensing and Regulation (Commission) adopts 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 117.65 - 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, without changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 Tex Reg 5841). These rules and repeals are not being republished.

The amendments to Subchapter F §117.64, regarding the Massage Therapy Program, are adopted with changes to the proposed text as published in the October 11, 2019, issue of the *Texas Register* (44 Tex Reg 5841) and are republished. The adopted changes are referred to herein as "adopted rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

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

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

As required by HB 1865, the adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted rules amend the title of Subchapter C, adding student permit, as created by HB 1865.

The adopted 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 adopted rules establish the fingerprint requirements for criminal history background checks as required by HB 1865 by adding statutory language to the rule.

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

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

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

The adopted 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 adopted 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 adopted 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 adopted 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 adopted rules establish the fingerprint requirements for criminal history background checks as required by HB 1865 by adding statutory language to rule.

The adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted 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 adopted rules also update outdated language for clarity and add that notices may be emailed.

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

The adopted 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 require-

ment that the course or internship be capped or separately approved.

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

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

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

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

The adopted 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 adopted 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 adopted rule amendment establishes the fingerprint requirements for criminal history background checks, as required by HB 1865, by adding statutory language to rule.

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

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

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

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

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

PUBLIC COMMENTS

The Department drafted and distributed the rules to persons internal and external to the agency. The proposed rules were published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5841). The deadline for public comments was November 11, 2019. The Department received comments from 17 interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One commenter agrees with the cap on hours being removed for internships and would like to have a state exam.

Department Response: The proposed rules remove the cap on the number of internship hours a student can obtain to align requirements with statute. Texas Occupations Code Chapter 455, §455.053 and §455.055, states that the Department must set the maximum number of hours a student may accumulate before the student is required to be licensed. The maximum number of hours a student may accumulate in an internship before they may obtain a license is 50 hours, as prescribed in Texas Occupations Code Chapter 455, §455.156. The comment on a state exam does not address any of the current proposed rules. It has been referred to the appropriate division for review. No change has been made to the proposed rules in response to this comment.

Comment: Two commenters are concerned with the implementation of the student permit process and feels that more clarification is needed.

Department Response: The proposed rules implement the student permit requirements as required by House Bill 1865, 86th Legislature, Regular Session (2019). House Bill 1865 will apply to students whom enroll in a massage school on or after June 1, 2020. These comments concern agency procedure and administration of the student permit process. These comments have been referred to the appropriate division for review. No change has been made to the proposed rules in response to these comments.

Comment: One commenter disagrees with the removal of the requirement that justifications be submitted to the Department on admission requirements.

Department Response: The proposed rules require that a school develop and maintain admission requirements without the added burden of justifying those business decisions to the Department. No change has been made to the proposed rules in response to this comment.

Comment: One commenter is concerned with the current rules regarding massage school license renewals at §117.57(e) and the impact on students and student permits.

Department Response: The proposed rules make a clarifying change to the term massage school by removing the phrase "a massage therapy education program." The proposed rules do not change the purpose or impact of current rules at §117.57(e), beyond removing the extra language. The commenter is concerned with the impact of current rules on students and the student permit process. These are procedural and administrative concerns and beyond the scope of the proposed rules. No change has been made to the proposed rules in response to this comment.

Comment: One commenter would like to see the student permit expire upon successful completion of the number of internship hours.

Department Response: The proposed rules for new student permits provide for Department procedural and administrative implementation of the new permit. This requirement allows the Department to properly track the student throughout the course of their career, provides administrative safeguards, and does not require students to pay multiple fees or renewals. No change has been made to the proposed rules in response to this comment.

Comment: One commenter believes that the definition for "student permit" is unclear and seems to limit students to only 50 internship hours.

Department Response: The proposed rules for student permits and the definition of "student permit" does not limit the number of internship hours that a student can accumulate. The proposed rules address only the requirements the Department is required to track a student as they complete the minimum 500-hour education required by law. No change has been made to the proposed rules in response to this comment.

Comment: One commenter does not agree with removing §117.58(b) regarding designation of an individual by the director of a massage school when the director is unavailable or absent.

Department Response: The proposed rules add the requirement that a massage school shall notify the Department of the designated contact person to §117.58(a) where the current rule already outlines the responsibilities of the designated contact person. No change has been made to the proposed rules in response to this comment.

Comment: Two commenters are concerned with the removal of the "hour cap" or "maximum number of hours" a student may accumulate in a massage school internship and how this change aligns with statute.

Department Response: The proposed rules remove the cap on the number of internship hours a student can obtain to align requirements with statute. Texas Occupations Code Chapter 455, Sections 455.053 and 455.055 states that the Department must set the maximum number of hours a student may accumulate before the student is required to be licensed. The maximum number of hours a student may accumulate in an internship before they may obtain a license is 50 hours, as prescribed in Texas Occupations Code Chapter 455, §455.156. No change has been made to the proposed rules in response to these comments.

Comment: One commenter believes that §117.66(b)(6)(B)(ii) and (i) pertaining to massage school refund policies say opposite things and is concerned with how a student is protected in the event a massage school does not teach the total scheduled hours in any required program.

Department Response: The proposed rules do not make substantive changes to current rules at §117.66(b)(6)(B) pertaining to massage school refund requirements. The proposed rules update the terminology to "unused" instead of "unearned" tuition for clarity. Section 117.66(b)(6)(B)(i) speaks to "all" tuition while §117.66(b)(6)(B)(ii) speaks to only the "unused" portion of the tuition that can be refunded. The current rule is speaking to two different situations. The commenter raises an issue specific question about the application of the current rules, this comment has been referred to the appropriate division for review. No change has been made to the proposed rules in response to this comment.

Comment: One commenter would like to know the purpose of §117.64(e)(3) and feels like it is already covered in another section.

Department Response: The proposed rule does not make a substantive change to current rule. The proposed rules remove the redundant use of the phrase "therapy education program" and renumbers the section. The requirement of §117.64(e)(3) is current rule and outlines what records must be retained by the school and for a period of three years. No change has been made to the proposed rules in response to this comment.

Comment: The Career Colleges and Schools of Texas commented that they are concerned that the proposed rules at §117.59 could be interpreted to prohibit programs that exceed 500 hours.

Department Response: The proposed rules remove the cap on the number of internship hours a student can obtain to align requirements with statute. Texas Occupations Code Chapter 455, §455.053 and §455.055, states that the Department must set the maximum number of hours a student may accumulate before the student is required to be licensed. The maximum number of hours a student may accumulate in an internship before they may obtain a license is 50 hours, as prescribed in Texas Occupations Code Chapter 455, §455.156. The rules, current and proposed, address the minimum 500-hour course of instruction within the jurisdiction of the department to regulate. The proposed rules do not prohibit programs that exceed 500 hours. No change has been made to the proposed rules in response to this comment.

Comment: One commenter disagrees with the new draping rules and believes it should be their right to choose whether or not to be draped or undraped. The commenter would like the Department to change the current refund policy rules and allow schools discretion of what the refund policy should look like.

Department Response: The proposed rules on draping were developed by the Massage Therapy Advisory Board Standard of Care workgroup. The requirement for draping of certain areas at all times is intended to protect not only the client but the therapist. The proposed rules provide updated terminology for school refunds to provide clarity. The comment does not address a current rule proposal because the proposed rules do not change the current refund process. The comment has been referred to the appropriate division for review.

Comment: One commenter states that the MBLEX is not a good test for Texas and would like to see it discontinued as soon as possible.

Department Response: The comment on the MBLEX does not address any of the current proposed rules. It has been referred to the appropriate division for review. No change has been made to the proposed rules in response to this comment.

Comment: One commenter submitted several concerns regarding the current and proposed rules specifically related to the following: use of the term "curriculum outline;" general requirements of an application of massage therapists; approved continuing education courses and providers; massage school curriculum outline and internship; massage school admission requirements; massage school transcripts and records; massage school cancellation, refund, and school closure policies; massage school student progress requirements; and massage school attendance policy.

Department Response: The commenter made several comments on rules that are not currently under review, have not been proposed for substantive change, or on issues that are beyond the scope of this rulemaking. Those portions of the comments have been referred to the appropriate division for further review.

The commenter is concerned with the removal of the cap on internship hours. The proposed rules remove the cap on the number of internship hours a student can obtain to align requirements with statute. Texas Occupations Code Chapter 455, §455.053 and §455.055, states that the Department must set the maximum number of hours a student may accumulate before the student is required to be licensed. The maximum number of hours a student may accumulate in an internship before they may obtain a license is 50 hours, as prescribed in Texas Occupations Code Chapter 455, §455.156. The Department does not have authority to approve more than the maximum number of hours a student may accumulate beyond what is required to obtain a license. The rules, current and proposed, address the minimum 500-hour course of instruction within the jurisdiction of the department to regulate. The proposed rules do not prohibit programs that exceed 500 hours. No change has been made to the proposed rules in response to this comment.

The commenter is concerned with what records are required to be retained by a massage school. The proposed rules retain some of the current requirements for records retention to ensure that the most pertinent information of a student record is retained for a minimum of three years to comply with audit or inspection requirements and for verification of potential transfer students. No change has been made to the proposed rules in response to this comment.

The commenter does not believe that the Department has authority or control to "make a student eligible to take the appropriate examination." The law provides the Department with the authority to prepare, recognize, administer or arrange for the administration of an examination under Chapter 455. The proposed rules implement the student permit requirements as required by House Bill 1865, 86th Legislature, Regular Session (2019). House Bill 1865 applies to students whom are enrolled in a massage school on or after June 1, 2020. The law requires in §455.2035, Texas Occupations Code, "On a student's completion of a prescribed course of instruction, the school shall notify the Department that the student has completed the required number of hours and is eligible to take the appropriate examination." No change has been made to the proposed rules in response to this comment.

The commenter does not agree with the requirement that financial records must be retained as required by federal retention requirements, if applicable. The Department agrees that this requirement is not necessary, burdensome, and should be removed. The Department made changes to the proposed rule in response to this comment and amended §117.64 to remove this requirement.

Comment: One commenter states that the requirement that the school notify the department that a student is eligible to take an exam is something never required before and does not serve the student.

Department Response: The proposed rules implement the student permit requirements as required by House Bill 1865, 86th Legislature, Regular Session (2019). House Bill 1865 applies to students whom are enrolled in a massage school on or after

June 1, 2020. The law states, in §455.2035(b), Texas Occupations Code, "On a student's completion of a prescribed course of instruction, the school shall notify the department that the student has completed the required number of hours and is eligible to take the appropriate examination." No change has been made to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Massage Therapy Advisory Board (Advisory Board) met on November 19, 2019, to discuss the proposed rules and the comments received. The Advisory Board recommended adopting the proposed rules with one change to §117.64. At its meeting on December 20, 2019, the Commission adopted the proposed rules with changes as recommended by the Advisory Board.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §117.2

STATUTORY AUTHORITY

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. CONTINUING EDUCATION

16 TAC §117.31

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. LICENSED MASSAGE THERAPY INSTRUCTORS

16 TAC §117.40

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

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SUBCHAPTER F. LICENSED MASSAGE SCHOOLS

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

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

§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 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) 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;

(7) dates of courses;

(8) address of student;

(9) signature of the school owner or designated contact person; and

(10) pass/fail score.

(e) Each massage school 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.

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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16 TAC §117.56, §117.60

The repeals are adopted 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 repeals are also adopted 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 adopted repeals are those set forth in Texas Occupations Code, Chapters 51 and 455. No other statutes, articles, or codes are affected by the adopted repeals.

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 G. LICENSED MASSAGE ESTABLISHMENTS

16 TAC §§117.80, 117.82, 117.83

The rules are adopted 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 rules are also adopted 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 adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 455. No

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

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SUBCHAPTER H. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§117.90, 117.91, 117.93

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. FEES

16 TAC §117.100

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brad Bowman

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 216. CONTINUING COMPETENCY

22 TAC §216.8

The Texas Board of Nursing (Board) adopts amendments to §216.8, concerning Relicensure Process. The amendments are adopted with a minor editorial change to subsection (e) to include the term "applicable" for consistency with the other amended subsections of the section. The remainder of the adopted text is unchanged from the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7293). This rule will be republished.

Reasoned Justification. The amendments make conforming changes to the section for consistency with 22 TAC §216.3, which was amended and adopted by the Board on November 19, 2019. The changes to §216.3 were adopted under the authority of the Texas Occupations Code §§301.151, 157.0513 and 301.308, the Texas Health and Safety Code §481.0764 and §481.07635, and House Bills (HB) 2454, 2059, 3285, and 2174, enacted by the 86th Texas Legislature. Those adopted amendments affected §216.3(c) and added new §216.3(i), making the current references in §216.8 inconsistent and outdated. The adopted changes to §216.8 align the section with the provisions of newly amended §216.3.

How the Section Will Function. Section 216.8(b) - (e) eliminates the references to §216.3(d) because targeted continuing competency requirements are contained in other subsections of §216.3 and may apply when a nurse seeks reinstatement pursuant to §216.8.

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. 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.

§216.8. Relicensure Process.

(a) Renewal of license.

(1) Upon renewal of the license, the licensee shall sign a statement attesting that the CNE contact hours or approved national nursing certification requirement has been met.

(2) The contact hours must have been completed within the licensing period and by the time of application for license renewal. Contact hours from a previous licensing period will not be accepted. Additional contact hours earned may not be used for subsequent licensure renewals.

(b) Persons licensed by examination. A candidate licensed by examination shall be exempt from the CNE contact hours or approved national nursing certification requirement for issuance of the initial Texas license and for the immediate licensing period following initial Texas licensure with the exception of applicable targeted continuing competency requirements in §216.3 of this chapter (relating to Continuing Competency Requirements).

(c) Persons licensed by endorsement. An applicant licensed by endorsement shall be exempt from the CNE contact hours or approved national nursing certification requirement for issuance of the initial Texas license and for the immediate licensing period following initial Texas licensure with the exception of applicable targeted continuing competency requirements in §216.3 of this chapter (relating to Continuing Competency Requirements).

(d) Delinquent license.

(1) A license that has been delinquent for less than four years may be renewed by the licensee submitting proof of having completed 20 contact hours of acceptable CNE or a current approved national nursing certification in his or her prior area of practice within the two years immediately preceding application for relicensure and by meeting all other Board requirements. A licensee shall be exempt from the continuing competency requirements for the immediate licensing period following renewal of the delinquent license with the exception of applicable targeted continuing competency requirements in §216.3 of this chapter (relating to Continuing Competency Requirements).

(2) A license that has been delinquent for four or more years may be renewed upon completion of requirements listed in §217.6 of this title (relating to Failure to Renew License).

(e) Reactivation of a license.

(1) A license that has been inactive for less than four years may be reactivated by the licensee submitting proof of having completed 20 contact hours of acceptable CNE or a current approved national nursing certification in his or her prior area of practice within the two years immediately preceding application for reactivation and by meeting all other Board requirements. A licensee shall be exempt from the continuing competency requirements for the immediate licensing period following reactivation of the license with the exception of ap-

pllicable targeted continuing competency requirements in §216.3 of this chapter (relating to Continuing Competency Requirements).

(2) A license that has been inactive for four or more years may be reactivated upon completion of requirements listed in §217.9 of this title (relating to Inactive and Retired Status).

(f) Reinstatement of a license. A licensee whose license has been revoked and subsequently applies for reinstatement must show evidence that the continuing competency requirements and other Board requirements have been met prior to reinstatement of the license by the Board.

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 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.3

The Texas Board of Nursing (Board) adopts an amendment to §217.3, concerning Temporary Authorization to Practice/Temporary Permit. The amendment is adopted without changes to the proposed text published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7294). The rules will not be republished.

Reasoned Justification. The amendment is necessary to allow temporary authorizations to practice/temporary permits to be re-issued if a nurse is unable to complete the required courses/orientation within a six-month period. Due to scheduling challenges and an individual's performance pace, it sometimes takes a nurse longer than six months to complete a refresher course, extensive orientation, or academic course. The intent of §217.3 is to provide a mechanism for nurses to demonstrate their competency to return to nursing practice. Since they cannot practice nursing while completing a refresher course, extensive orientation, or academic course, they pose no risk of harm to the public during this time. The amendment merely allows the nurse a sufficient amount of time to re-establish current licensure after demonstrating he/she is safe and competent to do so. There is no cost associated with the issuance of a temporary authorization to practice/temporary permit under this section.

How the Section Will Function. Section 217.3 removes the current limitation from the rule that a temporary authorization to practice/temporary permit is unable to be re-issued/renewed. Under the adoption, a temporary authorization to practice/temporary permit may be re-issued/renewed if the nurse is unable to complete a refresher course, extensive orientation, or academic course within a six-month time period in order to grant the nurse additional time to complete the course/orientation.

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.

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.

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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22 TAC §217.5

The Texas Board of Nursing (Board) adopts amendments to §217.5, concerning Temporary License and Endorsement. The amendments are adopted without changes to the proposed text as published in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7295) and will not be republished.

Reasoned Justification. The amendments are adopted under the authority of the Texas Occupations Code §301.151 and §301.253 and implement the requirements of Senate Bill (SB) 1200, enacted by the 86th Texas Legislature, effective September 1, 2019.

SB 1200

SB 1200 requires agencies like the Board to establish a process to allow qualifying military spouses to practice nursing in Texas without obtaining a license. In order to qualify for this licensure exemption, the military spouse must be currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements in this state. Further, the military spouse must notify the agency of his/her intent to practice in this state; submit proof of the individual's residency in this state and a copy of the individual's military identification card; and receive confirmation from the agency that the agency has verified the individual's license in the other jurisdiction and that the individual is authorized to practice nursing in this state. The individual may not practice nursing in this state for a period to extend beyond three years from the date the agency approves the individual's practice. The bill also permits an agency to issue a license to a qualifying military spouse if the agency chooses to do so. However, the agency is prohibited from charging the military spouse a fee for the issuance of the license.

Because employers, consumers, and other members of the public routinely utilize the Board's on-line licensure verification system to determine the licensure status of nurses in Texas, the

Board has determined that issuing licenses to qualifying military spouses is most consistent with its current licensure and verification processes. These licenses will be limited to three-year terms and will be searchable through the Board's on-line verification system in the same manner as other license types. Further, individuals receiving a license under the rule will not be required to complete continuing education requirements for the duration of the license, which is limited to a three-year time period.

Canadian NCLEX-RN

The remainder of the adopted changes are necessary to allow the successful completion of the Canadian NCLEX-RN and licensure from a Canadian province by NCLEX-RN to satisfy a portion of the Board's endorsement requirements. On January 5, 2015, the NCLEX-RN replaced the CRNE as Canada's national examination for those applying to be a registered nurse. The Board currently requires the successful completion of the U.S. NCLEX-RN for licensure as a registered nurse in Texas if the applicant is applying by endorsement. The Board also currently requires licensure by another U.S. jurisdiction for licensure as a registered nurse in Texas if the applicant is applying by endorsement. The adopted amendments extend this licensure opportunity to applicants successfully passing the Canadian NCLEX-RN and holding licensure from a Canadian province by NCLEX-RN. This opportunity will only apply to applicants seeking registered nurse licensure because the Canadian NCLEX-PN has not been approved for use at this time.

How the Section Will Function. Adopted 217.5(a)(2) allows a nurse to qualify for licensure in Texas through endorsement if he/she has successfully completed the Canadian NCLEX-RN in January 2015 or after. Adopted §217.5(a)(3) allows a nurse to qualify for licensure in Texas through endorsement if the nurse is licensed by a Canadian province by NCLEX-RN. The adopted amendments to §217.5(b) make similar conforming changes to the section.

Adopted §217.5(g)(1) sets forth the criteria that a military spouse must meet in order to be eligible for licensure under SB 1200. First, a military spouse must hold an active, current license to practice nursing in another state or territory that has licensing requirements, including education requirements, that are determined by the Board to be substantially equivalent to the requirements for nursing licensure in Texas. Second, the military spouse's license may not be subject to any current restriction, eligibility order, disciplinary order, probation, suspension, or other encumbrance. Third, the military spouse must submit proof of the military spouse's residency in Texas and a copy of the spouse's military identification card. Fourth, the military spouse must notify the Board of the military spouse's intent to practice nursing in Texas on a form prescribed by the Board. Finally, the military spouse must meet the Board's fitness to practice and eligibility criteria set forth in §213.27 (relating to Good Professional Character), §213.28 (relating to Licensure of Individuals with Criminal History), and §213.29 (relating to Fitness to Practice). Adopted §217.5(g)(2) provides that, if the military spouse meets this specified criteria, the Board will issue a license to the military spouse to practice nursing in Texas. Further, the license will expire no later than the third anniversary of the date of the issuance of the license and may not be renewed. The military spouse will not be charged a fee for the issuance of the license. Adopted §217.5(g)(3) provides that a military spouse who is unable to meet the specified criteria in (g)(1) may still seek licensure in Texas, pursuant to the requirements in §217.2 (relating to Licensure by Examination for Graduates

of Nursing Education Programs Within the United States, its Territories, or Possessions), §217.4 (relating to Requirements for Initial Licensure by Examination for Nurses Who Graduate from Nursing Education Programs Outside of United States' Jurisdiction), §213.30 (relating to Declaratory Order of Eligibility for Licensure), §221.3 (relating to APRN Education Requirements for Licensure), §221.4 (relating to Licensure as an APRN), or the other remaining subsections of §217.5, as applicable. Finally, adopted §217.5(g)(4) requires a military spouse issued a license to practice nursing in Texas to comply with all laws and regulations applicable to the practice of nursing in Texas.

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, 301.253, and 55.0041.

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 301.253(a) states that, except as provided by §301.452, an applicant is entitled to take the examination prescribed by the Board if: (1) the Board determines that the applicant meets the qualifications required by §301.252; and (2) the applicant pays the fees required by the Board.

Section 301.253(b) states that each examination administered under Section 301.253 must be prepared by a national testing service or the Board. The Board shall ensure that the examination is administered in various cities throughout the state.

Section 301.253(c) provides that the examination shall be designed to determine the fitness of the applicant to practice professional nursing or vocational nursing.

Section 301.253(c-1) states that the Board shall: (1) adopt policies and guidelines detailing the procedures for the testing process, including test admission, test administration, and national examination requirements; and (2) post on the Board's Internet website the policies that reference the testing procedures by the national organization selected by the board to administer an examination.

Section 301.253(d) states that the Board shall determine the criteria that determine a passing score on the examination. The criteria may not exceed those required by the majority of the states.

Section 301.253(e) provides that a written examination prepared, approved, or offered by the Board, including a standardized national examination, must be validated by an independent testing professional.

Section 301.253(f) states that the Board shall develop a written refund policy regarding examination fees that: (1) defines the reasonable notification period and the emergencies that would qualify for a refund; and (2) does not conflict with any examination fee or refund policy of the testing service involved in administering the examination.

Section 301.253(g) states that the Board may recommend to a national testing service selected by the Board to offer examinations under this section the Board's written policy for refunding an examination fee for an applicant who: (1) provides advance

notice of the applicant's inability to take the examination; or (2) is unable to take the examination because of an emergency.

Section 55.041(a) provides that, notwithstanding any other law, a military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

Section 55.041(b) states that before engaging in the practice of the business or occupation, the military spouse must: (1) notify the applicable state agency of the spouse's intent to practice in this state; (2) submit to the agency proof of the spouse's residency in this state and a copy of the spouse's military identification card; and (3) receive from the agency confirmation that: (A) the agency has verified the spouse's license in the other jurisdiction; and (B) the spouse is authorized to engage in the business or occupation in accordance with this section.

Section 55.041(c) provides that the military spouse shall comply with all other laws and regulations applicable to the business or occupation in this state.

Section 55.041(d) states that a military spouse may engage in the business or occupation under the authority of this section only for the period during which the military service member to whom the military spouse is married is stationed at a military installation in this state but not to exceed three years from the date the spouse receives the confirmation described §55.041(b)(3).

Section 55.041(e) provides that a state agency that issues a license shall adopt rules to implement this section. The rules must establish a process for the agency to: (1) identify, with respect to each type of license issued by the agency, the jurisdictions that have licensing requirements that are substantially equivalent to the requirements for the license in this state; and (2) verify that a military spouse is licensed in good standing in a jurisdiction described by Subdivision (1).

Section 55.041(f) provides that, in addition to the rules adopted under §55.041(e), a state agency that issues a license may adopt rules to provide for the issuance of a license to a military spouse to whom the agency provides confirmation under §55.041 (b)(3). A license issued under this subsection must expire not later than the third anniversary of the date the agency provided the confirmation and may not be renewed. A state agency may not charge a fee for the issuance of the license.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.68

The Texas Board of Veterinary Medical Examiners (Board) adopts new §573.68, concerning telemedicine. The new rule is adopted without changes to the proposed text as published in the August 16, 2019, issue of the *Texas Register* (44 TexReg 4288) and will not be republished.

Reasoned Justification and Factual Basis

The purpose of the new rule is to compile current regulations concerning telemedicine for the ease and convenience of the regulated population. The new rule merely restates existing law and does not add or modify existing regulations in any manner.

Summary of Comments and Agency Response

The agency received no public comment on this proposed rule.

Statutory Authority

The new rule is adopted under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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John Helenberg

Executive Director

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7573



CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.25

The Texas Board of Veterinary Medical Examiners (Board) adopts the repeal of §575.25, concerning Recommended Schedule of Sanctions. The repeal is adopted without changes to the proposed text as published in the August 16, 2019, issue of the *Texas Register* (44 TexReg 4289) and will not be republished.

Reasoned Justification and Factual Basis

This repeal is necessary because the Board is simultaneously adopting a new rule that outlines a new and updated schedule of sanctions. It is the goal of this new schedule of sanctions to bring more uniformity and predictability to the Board's disciplinary process.

Summary of Comments and Agency Response

The agency did not receive any public comments that concerned the proposed repeal of this rule.

Statutory Authority

The repeal is adopted under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of 801.411, Occupations Code, which states that the Board shall adopt a schedule of penalties, disciplinary actions, and other sanctions the board may impose under this chapter.

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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John Helenberg

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Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7573



22 TAC §575.25

The Texas Board of Veterinary Medical Examiners (Board) adopts new §575.25, concerning Schedule of Sanctions. The new rule is adopted with changes to the proposed text as published in the August 16, 2019, issue of the *Texas Register* (44 TexReg 4290) and will be republished.

Reasoned Justification and Factual Basis

The purpose of the new rule is to provide greater uniformity and fairness in the Board's disciplinary process. This schedule of sanctions should provide clarity to both the licensees and the public about the recourse available to the Board in pursuing a complaint.

Summary of Comments and Agency Response

The Board received public comment regarding the application of the schedule of sanctions, the confidentiality provision and the standard of care provision.

In response to the concerns expressed over the applicability of the proposed rule, the proposed schedule of sanctions should be utilized by any finder of fact, which includes any Board disciplinary processes or proceedings before the State Office of Administrative Hearings. In addition, there were questions about utilizing all listed disciplinary actions in each grid on the schedule of sanctions chart. It is not the Board's intention to utilize each listed disciplinary action but allow the Board the flexibility to choose which sanctions are most appropriate in any given scenario.

The Board received comments on the provision in the confidentiality section that creates a Class C offense should a veterinarian reveal confidential information when rebutting a social media post. Commenters wanted a harsher penalty, but the Board felt that there was sufficient flexibility in the aggravating factors that a harsher punishment would be inconsistent with the rest of the proposed schedule of sanctions.

Finally, the Board received comments on the standard of care provisions in the proposed schedule of sanctions. A proposal for considering the emotional suffering by an animal's owner as an aggravating factor was ultimately rejected. The Board felt

that the quality of veterinary care should not be contingent on the quality of the relationship between pet and owner.

Statutory Authority

The new rule is adopted under the authority of §801.151(a), Occupations Code, which states that the Board may adopt rules necessary to administer the chapter, and the authority of 801.411, Occupations Code, which states that the Board shall adopt a schedule of penalties, disciplinary actions and other sanctions that the board may impose under this chapter.

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

§575.25. Schedule of Sanctions.

This Schedule of Sanctions shall be used to assess the appropriate sanction to be imposed upon a licensee that is subject to disciplinary action. Figure: 22 TAC §575.25

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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Texas Board of Veterinary Medical Examiners

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 131. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §131.2, concerning Definitions; and §131.46, concerning Emergency Services. The amendments are adopted without changes to the proposed text as published in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4935), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

These amendments are necessary to comply with House Bill (H.B.) 3152, 85th Legislature, Regular Session, 2017, which amends the Texas Health and Safety Code, Chapter 323. H.B. 3152 requires HHSC to define facilities as sexual assault forensic exam-ready (SAFE-ready) facilities, and requires certain health-care facilities to provide sexual assault survivors the option to transfer to a facility that is SAFE-ready. The amendment to §131.46 also implements H.B. 4531, 86th Legislature, Regular Session, 2019, concerning the rights and treatment of and services provided to certain adult sexual assault survivors.

COMMENTS

The 31-day comment period ended on October 14, 2019.

During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §131.2

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and under Texas Health and Safety Code, Chapter 323.

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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Chief Counsel

Department of State Health Services

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For further information, please call: (512) 834-4591



SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §131.46

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and under Texas Health and Safety Code, Chapter 323.

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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Karen Ray

Chief Counsel

Department of State Health Services

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §131.45

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §131.45, concerning Facility Staffing and Training. The amendment to §131.45 is adopted without changes to the proposed text as published in the September 13,

2019, issue of the *Texas Register* (44 TexReg 4937), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of this amendment is to update the requirements for establishing a nursing peer review committee. The amendment to §131.45 is necessary to comply with House Bill (H.B.) 3296, 85th Legislature, Regular Session, 2017, which amended the Texas Occupations Code, Chapter 303, related to nursing peer review committees.

COMMENTS

The 31-day comment period ended October 14, 2019.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment to §131.45 is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the Texas Occupations Code, Chapter 303.

The amendment implements Texas Government Code §531.0055 and Texas Occupations Code, Chapter 303.

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 January 6, 2020.

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Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 834-4591



CHAPTER 133. HOSPITAL LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §133.2, concerning Definitions, and §133.41, concerning Hospital Functions and Services. Section 133.2 is adopted without changes to the proposed text as published in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4939). This rule will not be republished.

Section 133.41 is adopted with changes to the proposed text as published in the September 13, 2019, issue of the *Texas Register* (44 TexReg 4939). This rule will be republished.

BACKGROUND AND JUSTIFICATION

These amendments are necessary to comply with House Bill (H.B.) 3152, 85th Legislature, Regular Session, 2017, which amends the Texas Health and Safety Code, Chapter 323. H.B. 3152, requires HHSC to define facilities as sexual assault forensic exam-ready (SAFE-ready) facilities, and requires certain health-care facilities to provide sexual assault survivors the option to transfer to a facility that is SAFE-ready. The amendments to §133.41 implement H.B. 4531, 86th Legislature, Regular Session, 2019, concerning the rights and treatment of and

services provided to certain adult sexual assault survivors; and H.B. 531, 86th Legislature, Regular Session, 2019, concerning the retention of medical records from the forensic examination of a sexual assault survivor.

COMMENTS

The 31-day comment period ended on October 14, 2019. During this period, HHSC did not receive any comments regarding the proposed rules.

A minor addition was made to §133.41(j) to implement H.B. 531 and maintain compliance with the current medical record preservation standards outlined under Texas Health and Safety Code, Chapter 241.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §133.2

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the Texas Health and Safety Code, Chapter 323 and Chapter 241.

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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Department of State Health Services

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.41

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the Texas Health and Safety Code, Chapter 323 and Chapter 241.

§133.41. *Hospital Functions and Services.*

(a) Anesthesia services. If the hospital furnishes anesthesia services, these services shall be provided in a well-organized manner under the direction of a qualified physician in accordance with the Medical Practice Act and the Nursing Practice Act. The hospital is responsible for and shall document all anesthesia services administered in the hospital.

(1) Organization and staffing. The organization of anesthesia services shall be appropriate to the scope of the services offered. Only personnel who have been approved by the facility to provide anesthesia services shall administer anesthesia. All approvals or delega-

tions of anesthesia services as authorized by law shall be documented and include the training, experience, and qualifications of the person who provided the service.

(2) Delivery of services. Anesthesia services shall be consistent with needs and resources. Policies on anesthesia procedure shall include the delineation of pre-anesthesia and post-anesthesia responsibilities. The policies shall ensure that the following are provided for each patient.

(A) A pre-anesthesia evaluation by an individual qualified to administer anesthesia under paragraph (1) of this subsection shall be performed within 48 hours prior to surgery.

(B) An intraoperative anesthesia record shall be provided. The record shall include any complications or problems occurring during the anesthesia including time, description of symptoms, review of affected systems, and treatments rendered. The record shall correlate with the controlled substance administration record.

(C) A post-anesthesia follow-up report shall be written by the person administering the anesthesia before transferring the patient from the post-anesthesia care unit and shall include evaluation for recovery from anesthesia, level of activity, respiration, blood pressure, level of consciousness, and patient's oxygen saturation level.

(i) With respect to inpatients, a post-anesthesia evaluation for proper anesthesia recovery shall be performed after transfer from the post-anesthesia care unit and within 48 hours after surgery by the person administering the anesthesia, registered nurse (RN), or physician in accordance with policies and procedures approved by the medical staff and using criteria written in the medical staff bylaws for postoperative monitoring of anesthesia.

(ii) With respect to outpatients, immediately prior to discharge, a post-anesthesia evaluation for proper anesthesia recovery shall be performed by the person administering the anesthesia, RN, or physician in accordance with policies and procedures approved by the medical staff and using criteria written in the medical staff bylaws for postoperative monitoring of anesthesia.

(b) Chemical dependency services.

(1) Chemical dependency unit. A hospital may not admit patients to a chemical dependency services unit unless the unit is approved by the Department of State Health Services (department) as meeting the requirements of §133.163(q) of this title (relating to Spatial Requirements for New Construction).

(2) Admission criteria. A hospital providing chemical dependency services shall have written admission criteria that are applied uniformly to all patients who are admitted to the chemical dependency unit.

(A) The hospital's admission criteria shall include procedures to prevent the admission of minors for a condition which is not generally recognized as responsive to treatment in an inpatient setting for chemical dependency services.

(i) The following conditions are not generally recognized as responsive to treatment in a treatment facility for chemical dependency unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to intellectual disability;

(II) learning disabilities; or

(III) psychiatric disorders.

(ii) A minor may be qualified for admission based on other disabilities which would be responsive to chemical dependency services.

(iii) A minor patient shall be separated from adult patients.

(B) The hospital shall have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a member of the medical staff to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(C) A voluntarily admitted patient shall sign an admission consent form prior to admission to a chemical dependency unit which includes verification that the patient has been informed of the services to be provided and the estimated charges.

(3) Compliance. A hospital providing chemical dependency services in an identifiable unit within the hospital shall comply with Chapter 448, Subchapter B of this title (relating to Standard of Care Applicable to All Providers).

(c) Comprehensive medical rehabilitation services.

(1) Rehabilitation units. A hospital may not admit patients to a comprehensive medical rehabilitation services unit unless the unit is approved by the department as meeting the requirements of §133.163(z) of this title.

(2) Equipment and space. The hospital shall have the necessary equipment and sufficient space to implement the treatment plan described in paragraph (7)(C) of this subsection and allow for adequate care. Necessary equipment is all equipment necessary to comply with all parts of the written treatment plan. The equipment shall be on-site or available through an arrangement with another provider. Sufficient space is the physical area of a hospital which in the aggregate, constitutes the total amount of the space necessary to comply with the written treatment plan.

(3) Emergency requirements. Emergency personnel, equipment, supplies and medications for hospitals providing comprehensive medical rehabilitation services shall be as follows.

(A) A hospital that provides comprehensive medical rehabilitation services shall have emergency equipment, supplies, medications, and designated personnel assigned for providing emergency care to patients and visitors.

(B) The emergency equipment, supplies, and medications shall be properly maintained and immediately accessible to all areas of the hospital. The emergency equipment shall be periodically tested according to the policy adopted, implemented and enforced by the hospital.

(C) At a minimum, the emergency equipment and supplies shall include those specified in subsection (e)(4) of this section.

(D) The personnel providing emergency care in accordance with this subsection shall be staffed for 24-hour coverage and accessible to all patients receiving comprehensive medical rehabilitation services. At least one person who is qualified by training to perform advanced cardiac life support and administer emergency drugs shall be on duty each shift.

(E) All direct patient care licensed personnel shall maintain current certification in cardiopulmonary resuscitation (CPR).

(4) Medications. A rehabilitation hospital's governing body shall adopt, implement and enforce policies and procedures that require all medications to be administered by licensed nurses, physi-

cians, or other licensed professionals authorized by law to administer medications.

(5) Organization and Staffing.

(A) A hospital providing comprehensive medical rehabilitation services shall be organized and staffed to ensure the health and safety of the patients.

(i) All provided services shall be consistent with accepted professional standards and practice.

(ii) The organization of the services shall be appropriate to the scope of the services offered.

(iii) The hospital shall adopt, implement and enforce written patient care policies that govern the services it furnishes.

(B) The provision of comprehensive medical rehabilitation services in a hospital shall be under the medical supervision of a physician who is on duty and available, or who is on-call 24 hours each day.

(C) A hospital providing comprehensive medical rehabilitation services shall have a medical director or clinical director who supervises and administers the provision of comprehensive medical rehabilitation services.

(i) The medical director or clinical director shall be a physician who is board certified or eligible for board certification in physical medicine and rehabilitation, orthopedics, neurology, neurosurgery, internal medicine, or rheumatology as appropriate for the rehabilitation program.

(ii) The medical director or clinical director shall be qualified by training or at least two years training and experience to serve as medical director or clinical director. A person is qualified under this subsection if the person has training and experience in the treatment of rehabilitation patients in a rehabilitation setting.

(6) Admission criteria. A hospital providing comprehensive medical rehabilitation services shall have written admission criteria that are applied uniformly to all patients who are admitted to the comprehensive medical rehabilitation unit.

(A) The hospital's admission criteria shall include procedures to prevent the admission of a minor for a condition which is not generally recognized as responsive to treatment in an inpatient setting for comprehensive medical rehabilitation services.

(i) The following conditions are not generally recognized as responsive to treatment in an inpatient setting for comprehensive medical rehabilitation services unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to intellectual disability;

(II) learning disabilities; or

(III) psychiatric disorders.

(ii) A minor may be qualified for admission based on other disabilities which would be responsive to comprehensive medical rehabilitation services.

(B) The hospital shall have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a member of the medical staff to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(7) Care and services.

(A) A hospital providing comprehensive medical rehabilitation services shall use a coordinated interdisciplinary team which is directed by a physician and which works in collaboration to develop and implement the patient's treatment plan.

(i) The interdisciplinary team for comprehensive medical rehabilitation services shall have available to it, at the hospital at which the services are provided or by contract, members of the following professions as necessary to meet the treatment needs of the patient:

- (I) physical therapy;
- (II) occupational therapy;
- (III) speech-language pathology;
- (IV) therapeutic recreation;
- (V) social services and case management;
- (VI) dietetics;
- (VII) psychology;
- (VIII) respiratory therapy;
- (IX) rehabilitative nursing;
- (X) certified orthotics;
- (XI) certified prosthetics;
- (XII) pharmaceutical care; and
- (XIII) in the case of a minor patient, persons who

have specialized education and training in emotional, mental health, or chemical dependency problems, as well as the treatment of minors.

(ii) The coordinated interdisciplinary team approach used in the rehabilitation of each patient shall be documented by periodic entries made in the patient's medical record to denote:

- (I) the patient's status in relationship to goal attainment; and
- (II) that team conferences are held at least every two weeks to determine the appropriateness of treatment.

(B) An initial assessment and preliminary treatment plan shall be performed or established by the physician within 24 hours of admission.

(C) The physician in coordination with the interdisciplinary team shall establish a written treatment plan for the patient within seven working days of the date of admission.

(i) Comprehensive medical rehabilitation services shall be provided in accordance with the written treatment plan.

(ii) The treatment provided under the written treatment plan shall be provided by staff who are qualified to provide services under state law. The hospital shall establish written qualifications for services provided by each discipline for which there is no applicable state statute for professional licensure or certification.

(iii) Services provided under the written treatment plan shall be given in accordance with the orders of physicians, dentists, podiatrists or practitioners who are authorized by the governing body, hospital administration, and medical staff to order the services, and the orders shall be incorporated in the patient's record.

(iv) The written treatment plan shall delineate anticipated goals and specify the type, amount, frequency, and anticipated duration of service to be provided.

(v) Within 10 working days after the date of admission, the written treatment plan shall be provided. It shall be in the person's primary language, if practicable. What is or would have been practicable shall be determined by the facts and circumstances of each case. The written treatment plan shall be provided to:

- (I) the patient;
- (II) a person designated by the patient; and

(III) upon request, a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(vi) The written treatment plan shall be reviewed by the interdisciplinary team at least every two weeks.

(vii) The written treatment plan shall be revised by the interdisciplinary team if a comprehensive reassessment of the patient's status or the results of a patient case review conference indicates the need for revision.

(viii) The revision shall be incorporated into the patient's record within seven working days after the revision.

(ix) The revised treatment plan shall be reduced to writing in the person's primary language, if practicable, and provided to:

- (I) the patient;
- (II) a person designated by the patient; and

(III) upon request, a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(8) Discharge and continuing care plan. The patient's interdisciplinary team shall prepare a written continuing care plan that addresses the patient's needs for care after discharge.

(A) The continuing care plan for the patient shall include recommendations for treatment and care and information about the availability of resources for treatment or care.

(B) If the patient's interdisciplinary team deems it impracticable to provide a written continuing care plan prior to discharge, the patient's interdisciplinary team shall provide the written continuing care plan to the patient within two working days after the date of discharge.

(C) Prior to discharge or within two working days after the date of discharge, the written continuing care plan shall be provided in the person's primary language, if practicable, to:

- (i) the patient;
- (ii) a person designated by the patient; and

(iii) upon request, to a family member, guardian, or individual who has demonstrated on a routine basis responsibility and participation in the patient's care or treatment, but only with the patient's consent unless such consent is not required by law.

(d) Dietary services. The hospital shall have organized dietary services that are directed and staffed by adequate qualified personnel. However, a hospital that has a contract with an outside food management company or an arrangement with another hospital may meet this requirement if the company or other hospital has a dietitian who serves the hospital on a full-time, part-time, or consultant basis, and if the company or other hospital maintains at least the minimum requirements

specified in this section, and provides for the frequent and systematic liaison with the hospital medical staff for recommendations of dietetic policies affecting patient treatment. The hospital shall ensure that there are sufficient personnel to respond to the dietary needs of the patient population being served.

(1) Organization.

(A) The hospital shall have a full-time employee who is qualified by experience or training to serve as director of the food and dietetic service, and be responsible for the daily management of the dietary services.

(B) There shall be a qualified dietitian who works full-time, part-time, or on a consultant basis. If by consultation, such services shall occur at least once per month for not less than eight hours. The dietitian shall:

(i) be currently licensed under the laws of this state to use the titles of licensed dietitian or provisional licensed dietitian, or be a registered dietitian;

(ii) maintain standards for professional practice;

(iii) supervise the nutritional aspects of patient care;

(iv) make an assessment of the nutritional status and adequacy of nutritional regimen, as appropriate;

(v) provide diet counseling and teaching, as appropriate;

(vi) document nutritional status and pertinent information in patient medical records, as appropriate;

(vii) approve menus; and

(viii) approve menu substitutions.

(C) There shall be administrative and technical personnel competent in their respective duties. The administrative and technical personnel shall:

(i) participate in established departmental or hospital training pertinent to assigned duties;

(ii) conform to food handling techniques in accordance with paragraph (2)(E)(viii) of this subsection;

(iii) adhere to clearly defined work schedules and assignment sheets; and

(iv) comply with position descriptions which are job specific.

(2) Director. The director shall:

(A) comply with a position description which is job specific;

(B) clearly delineate responsibility and authority;

(C) participate in conferences with administration and department heads;

(D) establish, implement, and enforce policies and procedures for the overall operational components of the department to include, but not be limited to:

(i) quality assessment and performance improvement program;

(ii) frequency of meals served;

(iii) nonroutine occurrences; and

(iv) identification of patient trays; and

(E) maintain authority and responsibility for the following, but not be limited to:

(i) orientation and training;

(ii) performance evaluations;

(iii) work assignments;

(iv) supervision of work and food handling techniques;

(v) procurement of food, paper, chemical, and other supplies, to include implementation of first-in first-out rotation system for all food items;

(vi) ensuring there is a four-day food supply on hand at all times;

(vii) menu planning; and

(viii) ensuring compliance with Chapter 228 of this title (relating to Retail Food).

(3) Diets. Menus shall meet the needs of the patients.

(A) Therapeutic diets shall be prescribed by the physician(s) responsible for the care of the patients. The dietary department of the hospital shall:

(i) establish procedures for the processing of therapeutic diets to include, but not be limited to:

(I) accurate patient identification;

(II) transcription from nursing to dietary services;

(III) diet planning by a dietitian;

(IV) regular review and updating of diet when necessary; and

(V) written and verbal instruction to patient and family. It shall be in the patient's primary language, if practicable, prior to discharge. What is or would have been practicable shall be determined by the facts and circumstances of each case;

(ii) ensure that therapeutic diets are planned in writing by a qualified dietitian;

(iii) ensure that menu substitutions are approved by a qualified dietitian;

(iv) document pertinent information about the patient's response to a therapeutic diet in the medical record; and

(v) evaluate therapeutic diets for nutritional adequacy.

(B) Nutritional needs shall be met in accordance with recognized dietary practices and in accordance with orders of the physician(s) or appropriately credentialed practitioner(s) responsible for the care of the patients. The following requirements shall be met.

(i) Menus shall provide a sufficient variety of foods served in adequate amounts at each meal according to the guidance provided in the Recommended Dietary Allowances (RDA), as published by the Food and Nutrition Board, Commission on Life Sciences, National Research Council, Tenth edition, 1989, which may be obtained by writing the National Academies Press, 500 Fifth Street, NW Lock-box 285, Washington, D.C. 20055, telephone (888) 624-8373.

(ii) A maximum of 15 hours shall not be exceeded between the last meal of the day (i.e. supper) and the breakfast meal, unless a substantial snack is provided. The hospital shall adopt, im-

plement, and enforce a policy on the definition of "substantial" to meet each patient's varied nutritional needs.

(C) A current therapeutic diet manual approved by the dietitian and medical staff shall be readily available to all medical, nursing, and food service personnel. The therapeutic manual shall:

- (i) be revised as needed, not to exceed 5 years;
- (ii) be appropriate for the diets routinely ordered in the hospital;
- (iii) have standards in compliance with the RDA;
- (iv) contain specific diets which are not in compliance with RDA; and
- (v) be used as a guide for ordering and serving diets.

(e) Emergency services. All licensed hospital locations, including multiple-location sites, shall have an emergency suite that complies with §133.161(a)(1)(A) of this title (relating to Requirements for Buildings in Which Existing Licensed Hospitals are Located) or §133.163(f) of this title, and the following.

(1) Organization. The organization of the emergency services shall be appropriate to the scope of the services offered.

(A) The services shall be organized under the direction of a qualified member of the medical staff who is the medical director or clinical director.

(B) The services shall be integrated with other departments of the hospital.

(C) The policies and procedures governing medical care provided in the emergency suite shall be established by and shall be a continuing responsibility of the medical staff.

(D) Medical records indicating patient identification, complaint, physician, nurse, time admitted to the emergency suite, treatment, time discharged, and disposition shall be maintained for all emergency patients.

(E) Each freestanding emergency medical care facility shall advertise as an emergency room. The facility shall display notice that it functions as an emergency room.

(i) The notice shall explain that patients who receive medical services will be billed according to comparable rates for hospital emergency room services in the same region.

(ii) The notice shall be prominently and conspicuously posted for display in a public area of the facility that is readily available to each patient, managing conservator, or guardian. The postings shall be easily readable and consumer-friendly. The notice shall be in English and in a second language appropriate to the demographic makeup of the community served.

(2) Personnel.

(A) There shall be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the hospital.

(B) Except for comprehensive medical rehabilitation hospitals and pediatric and adolescent hospitals that generally provide care that is not administered for or in expectation of compensation:

(i) there shall be on duty and available at all times at least one person qualified as determined by the medical staff to initiate immediate appropriate lifesaving measures; and

(ii) in general hospitals where the emergency treatment area is not contiguous with other areas of the hospital that maintain 24 hour staffing by qualified staff (including but not limited to separation by one or more floors in multiple-occupancy buildings), qualified personnel must be physically present in the emergency treatment area at all times.

(C) Except for comprehensive medical rehabilitation hospitals and pediatric and adolescent hospitals that generally provide care that is not administered for or in expectation of compensation, the hospital shall provide that one or more physicians shall be available at all times for emergencies, as follows.

(i) General hospitals, except for hospitals designated as critical access hospitals (CAHs) by the Centers for Medicare & Medicaid Services (CMS), located in counties with a population of 100,000 or more shall have a physician qualified to provide emergency medical care on duty in the emergency treatment area at all times.

(ii) Special hospitals, hospitals designated as CAHs by the CMS, and general hospitals located in counties with a population of less than 100,000 shall have a physician on-call and able to respond in person, or by radio or telephone within 30 minutes.

(D) Schedules, names, and telephone numbers of all physicians and others on emergency call duty, including alternates, shall be maintained. Schedules shall be retained for no less than one year.

(3) Supplies and equipment. Adequate age appropriate supplies and equipment shall be available and in readiness for use. Equipment and supplies shall be available for the administration of intravenous medications as well as facilities for the control of bleeding and emergency splinting of fractures. Provision shall be made for the storage of blood and blood products as needed. The emergency equipment shall be periodically tested according to the policy adopted, implemented and enforced by the hospital.

(4) Required emergency equipment. At a minimum, the age appropriate emergency equipment and supplies shall include the following:

- (A) emergency call system;
- (B) oxygen;
- (C) mechanical ventilatory assistance equipment, including airways, manual breathing bag, and mask;
- (D) cardiac defibrillator;
- (E) cardiac monitoring equipment;
- (F) laryngoscopes and endotracheal tubes;
- (G) suction equipment;
- (H) emergency drugs and supplies specified by the medical staff;
- (I) stabilization devices for cervical injuries;
- (J) blood pressure monitoring equipment; and
- (K) pulse oximeter or similar medical device to measure blood oxygenation.

(5) Participation in local emergency medical service (EMS) system.

(A) General hospitals shall participate in the local EMS system, based on the hospital's capabilities and capacity, and the locale's existing EMS plan and protocols.

(B) The provisions of subparagraph (A) of this paragraph do not apply to a comprehensive medical rehabilitation hospital or a pediatric and adolescent hospital that generally provides care that is not administered for or in expectation of compensation.

(6) Emergency services for sexual assault survivors. This section does not affect the duty of a health care facility to comply with the requirements of the federal Emergency Medical Treatment and Active Labor Act of 1986 (42 U.S.C. §1395dd) that are applicable to the facility. The hospital shall develop, implement, and enforce policies and procedures to ensure that after a sexual assault survivor presents to the hospital following a sexual assault, the hospital shall provide the care specified under the Health and Safety Code, Chapter 323.

(f) Governing body.

(1) Legal responsibility. There shall be a governing body responsible for the organization, management, control, and operation of the hospital, including appointment of the medical staff. For hospitals owned and operated by an individual or by partners, the individual or partners shall be considered the governing body.

(2) Organization. The governing body shall be formally organized in accordance with a written constitution and bylaws which clearly set forth the organizational structure and responsibilities.

(3) Meeting records. Records of governing body meetings shall be maintained.

(4) Responsibilities relating to the medical staff.

(A) The governing body shall ensure that the medical staff has current bylaws, rules, and regulations which are implemented and enforced.

(B) The governing body shall approve medical staff bylaws and other medical staff rules and regulations.

(C) In hospitals that provide obstetrical services, the governing body shall ensure that the hospital collaborates with physicians providing services at the hospital to develop quality initiatives, through the adoption, implementation, and enforcement of appropriate hospital policies and procedures, to reduce the number of elective or nonmedically indicated induced deliveries or cesarean sections performed at the hospital on a woman before the 39th week of gestation.

(D) In hospitals that provide obstetrical services, the governing body shall ensure that the hospital implements a newborn audiological screening program, consistent with the requirements of Health and Safety Code, Chapter 47 (Hearing Loss in Newborns), and performs, either directly or through a referral to another program, audiological screenings for the identification of hearing loss on each newborn or infant born at the facility before the newborn or infant is discharged. These audiological screenings are required to be performed on all newborns or infants before discharge from the facility unless:

(i) a parent or legal guardian of the newborn or infant declines the screening;

(ii) the newborn or infant requires emergency transfer to a tertiary care facility prior to the completion of the screening;

(iii) the screening previously has been completed; or

(iv) the newborn was discharged from the facility not more than 10 hours after birth and a referral for the newborn was made to another program.

(E) In hospitals that provide obstetrical services, the governing body shall adopt, implement, and enforce policies and procedures related to the testing of any newborn for critical congenital heart disease (CCHD) that may present themselves at birth. The

facility shall implement testing programs for all infants born at the facility for CCHD. In the event that a newborn is presented at the emergency room following delivery at a birthing center or a home birth that may or may not have been assisted by a midwife, the facility shall ascertain if any testing for CCHD had occurred and, if not, shall provide the testing necessary to make such determination. The rules concerning the CCHD procedures and requirements are described in Chapter 37, Maternal and Infant Health Services, Subchapter E, Newborn Screening for Critical Congenital Heart Disease, §§37.75 - 37.79 of this title.

(F) The governing body shall determine, in accordance with state law and with the advice of the medical staff, which categories of practitioners are eligible candidates for appointment to the medical staff.

(i) In considering applications for medical staff membership and privileges or the renewal, modification, or revocation of medical staff membership and privileges, the governing body must ensure that each physician, podiatrist, and dentist is afforded procedural due process.

(I) If a hospital's credentials committee has failed to take action on a completed application as required by subclause (VIII) of this clause, or a physician, podiatrist, or dentist is subject to a professional review action that may adversely affect his medical staff membership or privileges, and the physician, podiatrist, or dentist believes that mediation of the dispute is desirable, the physician, podiatrist, or dentist may require the hospital to participate in mediation as provided in Civil Practice and Remedies Code (CPRC), Chapter 154. The mediation shall be conducted by a person meeting the qualifications required by CPRC §154.052 and within a reasonable period of time.

(II) Subclause (I) of this clause does not authorize a cause of action by a physician, podiatrist, or dentist against the hospital other than an action to require a hospital to participate in mediation.

(III) An applicant for medical staff membership or privileges may not be denied membership or privileges on any ground that is otherwise prohibited by law.

(IV) A hospital's bylaw requirements for staff privileges may require a physician, podiatrist, or dentist to document the person's current clinical competency and professional training and experience in the medical procedures for which privileges are requested.

(V) In granting or refusing medical staff membership or privileges, a hospital may not differentiate on the basis of the academic medical degree held by a physician.

(VI) Graduate medical education may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to training programs accredited by the Accreditation Council for Graduate Medical Education and by the American Osteopathic Association.

(VII) Board certification may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to certification programs approved by the American Board of Medical Specialties and the Bureau of Osteopathic Specialists.

(VIII) A hospital's credentials committee shall act expeditiously and without unnecessary delay when a licensed physician, podiatrist, or dentist submits a completed application for medical staff membership or privileges. The hospital's credentials

committee shall take action on the completed application not later than the 90th day after the date on which the application is received. The governing body of the hospital shall take final action on the application for medical staff membership or privileges not later than the 60th day after the date on which the recommendation of the credentials committee is received. The hospital must notify the applicant in writing of the hospital's final action, including a reason for denial or restriction of privileges, not later than the 20th day after the date on which final action is taken.

(ii) The governing body is authorized to adopt, implement and enforce policies concerning the granting of clinical privileges to advanced practice registered nurses (APRNs) and physician assistants, including policies relating to the application process, reasonable qualifications for privileges, and the process for renewal, modification, or revocation of privileges.

(I) If the governing body of a hospital has adopted, implemented and enforced a policy of granting clinical privileges to APRNs or physician assistants, an individual APRN or physician assistant who qualifies for privileges under that policy shall be entitled to certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, when an application for privileges is submitted to the hospital. At a minimum, any policy adopted shall specify a reasonable period for the processing and consideration of the application and shall provide for written notification to the applicant of any final action on the application by the hospital, including any reason for denial or restriction of the privileges requested.

(II) If an APRN or physician assistant has been granted clinical privileges by a hospital, the hospital may not modify or revoke those privileges without providing certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, to the APRN or physician assistant. At a minimum, the hospital shall provide the APRN or physician assistant written reasons for the modification or revocation of privileges and a mechanism for appeal to the appropriate committee or body within the hospital, as determined by the governing body of the hospital.

(III) If a hospital extends clinical privileges to an APRN or physician assistant conditioned on the APRN or physician assistant having a sponsoring or collaborating relationship with a physician and that relationship ceases to exist, the APRN or physician assistant and the physician shall provide written notification to the hospital that the relationship no longer exists. Once the hospital receives such notice from an APRN or physician assistant and the physician, the hospital shall be deemed to have met its obligations under this section by notifying the APRN or physician assistant in writing that the APRN's or physician assistant's clinical privileges no longer exist at that hospital.

(IV) Nothing in this clause shall be construed as modifying Subtitle B, Title 3, Occupations Code, Chapter 204 or 301, or any other law relating to the scope of practice of physicians, APRNs, or physician assistants.

(V) This clause does not apply to an employer-employee relationship between an APRN or physician assistant and a hospital.

(G) The governing body shall ensure that the hospital complies with the requirements concerning physician communication and contracts as set out in Health and Safety Code, §241.1015 (Physician Communication and Contracts).

(H) The governing body shall ensure the hospital complies with the requirements for reporting to the Texas Medical Board

the results and circumstances of any professional review action in accordance with the Medical Practice Act, Occupations Code, §160.002 and §160.003.

(I) The governing body shall be responsible for and ensure that any policies and procedures adopted by the governing body to implement the requirements of this chapter shall be implemented and enforced.

(5) Hospital administration. The governing body shall appoint a chief executive officer or administrator who is responsible for managing the hospital.

(6) Patient care. In accordance with hospital policy adopted, implemented and enforced, the governing body shall ensure that:

(A) every patient is under the care of:

(i) a physician. This provision is not to be construed to limit the authority of a physician to delegate tasks to other qualified health care personnel to the extent recognized under state law or the state's regulatory mechanism;

(ii) a dentist who is legally authorized to practice dentistry by the state and who is acting within the scope of his or her license; or

(iii) a podiatrist, but only with respect to functions which he or she is legally authorized by the state to perform.

(B) patients are admitted to the hospital only by members of the medical staff who have been granted admitting privileges;

(C) a physician is on duty or on-call at all times;

(D) specific colored condition alert wrist bands that have been standardized for all hospitals licensed under Health and Safety Code, Chapter 241, are used as follows:

(i) red wrist bands for allergies;

(ii) yellow wrist bands for fall risks; and

(iii) purple wrist bands for do not resuscitate status;

(E) the governing body shall consider the addition of the following optional condition alert wrist bands. This consideration must be documented in the minutes of the meeting of the governing body in which the discussion was held:

(i) green wrist bands for latex allergy; and

(ii) pink wrist bands for restricted extremity; and

(F) the governing body shall adopt, implement, and enforce a policy and procedure regarding the removal of personal wrist bands and bracelets as well as a patient's right to refuse to wear condition alert wrist bands; and

(G) the governing body shall adopt, implement, and enforce policies and procedures regarding DNR orders issued in the hospital by the attending physician that comply with Health and Safety Code, Chapter 166, Subchapter E (relating to Health Care Facility Do-Not-Resuscitate Orders), including policies and procedures regarding the rights of a patient and person authorized to make treatment decisions regarding the patient's DNR status; notice and medical record requirements for DNR orders and revocations; and actions the attending physician and hospital must take pursuant to Health and Safety Code §166.206 when the attending physician or hospital and the patient or person authorized to make treatment decisions regarding the patient's DNR status are in disagreement about the execution of,

or compliance with, a DNR order. The policies and procedures shall include that:

(i) Except in circumstances described by Health and Safety Code §166.203(a)(2), a DNR order issued for a patient is valid only if the patient's attending physician issues the order, the order is dated, and the order is issued in compliance with:

(I) the written and dated directions of a patient who was competent at the time the patient wrote the directions;

(II) the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Health and Safety Code §166.003(2)(E) or (F);

(III) the directions in an advance directive enforceable under Health and Safety Code §166.005 or executed in accordance with Health and Safety Code §§166.032, 166.034, or 166.035;

(IV) the directions of a patient's legal guardian or agent under a medical power of attorney acting in accordance with Health and Safety Code, Chapter 166, Subchapter D (relating to Medical Power of Attorney); or

(V) a treatment decision made in accordance with Health Safety Code §166.039.

(ii) A DNR order that is not issued in accordance with Health and Safety Code §166.203(a)(1) is valid only if the patient's attending physician issues the order, the order is dated, and:

(I) the order is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions;

(II) in the reasonable medical judgment of the patient's attending physician, the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation; and

(III) in the reasonable medical judgment of the patient's attending physician, the DNR order is medically appropriate.

(iii) A DNR order takes effect at the time the order is issued, as provided by Health and Safety Code §166.203(b).

(iv) Before placing in a patient's medical record a DNR order described by Health and Safety Code §166.203(a)(2), the physician, physician assistant, nurse, or other person acting on behalf of the hospital shall:

(I) notify the patient of the order's issuance; or

(II) if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and notify of the order's issuance the patient's known agent under a medical power of attorney or legal guardian or, for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Health and Safety Code §166.039(b)(1), (2), or (3).

(v) A physician providing direct care to a patient for whom a DNR order is issued shall revoke the patient's DNR order if the patient, or the patient's agent under a medical power of attorney or the patient's legal guardian if the patient is incompetent:

(I) effectively revokes an advance directive, in accordance with Health and Safety Code §166.042, for which a DNR order is issued under Health and Safety Code §166.203(a); or

(II) expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke a DNR order issued under Health and Safety Code §166.203(a).

(vi) A person providing direct care to a patient under the supervision of a physician shall notify the physician of a request to revoke a DNR order under Health and Safety Code §166.205(a).

(vii) A patient's attending physician may at any time revoke a DNR order executed under Health and Safety Code §166.203(a)(2).

(viii) On admission to the hospital, the hospital shall provide to the patient or person authorized to make treatment decisions regarding the patient's DNR status notice of the policies and procedures adopted under this subparagraph.

(7) Services. The governing body shall be responsible for all services furnished in the hospital, whether furnished directly or under contract. The governing body shall ensure that services are provided in a safe and effective manner that permits the hospital to comply with applicable rules and standards. At hospitals that have a mental health service unit, the governing body shall adopt, implement, and enforce procedures for the completion of criminal background checks on all prospective employees that would be considered for assignment to that unit, except for persons currently licensed by this state as health professionals.

(8) Nurse Staffing. The governing body shall adopt, implement and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses are available to meet the level of patient care needed. The governing body policy shall require that hospital administration adopt, implement and enforce a nurse staffing plan and policies that:

(A) require significant consideration be given to the nurse staffing plan recommended by the hospital's nurse staffing committee and the committee's evaluation of any existing plan;

(B) are based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(C) ensure that all nursing assignments consider client safety, and are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability;

(D) require use of the official nurse services staffing plan as a component in setting the nurse staffing budget;

(E) encourage nurses to provide input to the nurse staffing committee relating to nurse staffing concerns;

(F) protect from retaliation nurses who provide input to the nurse staffing committee; and

(G) comply with subsection (o) of this section.

(9) Photo identification badge. The governing body shall adopt a policy requiring employees, physicians, contracted employees, and individuals in training who provide direct patient care at the hospital to wear a photo identification badge during all patient encounters, unless precluded by adopted isolation or sterilization protocols. The badge must be of sufficient size and worn in a manner to be visible and must clearly state:

(A) at minimum the individual's first or last name;

(B) the department of the hospital with which the individual is associated;

(C) the type of license held by the individual, if applicable under Title 3, Occupations Code; and

(D) the provider's status as a student, intern, trainee, or resident, if applicable.

(g) Infection control. The hospital shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There shall be an active program for the prevention, control, and surveillance of infections and communicable diseases.

(1) Organization and policies. A person shall be designated as infection control professional. The hospital shall ensure that policies governing prevention, control and surveillance of infections and communicable diseases are developed, implemented and enforced.

(A) There shall be a system for identifying, reporting, investigating, and controlling health care associated infections and communicable diseases between patients and personnel.

(B) The infection control professional shall maintain a log of all reportable diseases and health care associated infections designated as epidemiologically significant according to the hospital's infection control policies.

(C) A written policy shall be adopted, implemented and enforced for reporting all reportable diseases to the local health authority and the Infectious Disease Surveillance and Epidemiology Branch, Department of State Health Services, Mail Code 2822, P.O. Box 149347, Austin, Texas 78714-9347, in accordance with Chapter 97 of this title (relating to Communicable Diseases), and Health and Safety Code, §§98.103, 98.104, and 98.1045 (relating to Reportable Infections, Alternative for Reportable Surgical Site Infections, and Reporting of Preventable Adverse Events).

(D) The infection control program shall include active participation by the pharmacist.

(2) Responsibilities of the chief executive officer (CEO), medical staff, and chief nursing officer (CNO). The CEO, the medical staff, and the CNO shall be responsible for the following.

(A) The hospital-wide quality assessment and performance improvement program and training programs shall address problems identified by the infection control professional.

(B) Successful corrective action plans in affected problem areas shall be implemented.

(3) Universal precautions. The hospital shall adopt, implement, and enforce a written policy to monitor compliance of the hospital and its personnel and medical staff with universal precautions in accordance with HSC Chapter 85, Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection.

(h) Laboratory services. The hospital shall maintain directly, or have available adequate laboratory services to meet the needs of its patients.

(1) Hospital laboratory services. A hospital that provides laboratory services shall comply with the Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988), in accordance with the requirements specified in 42 Code of Federal Regulations (CFR), §§493.1 - 493.1780. CLIA 1988 applies to all hospitals with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(2) Contracted laboratory services. The hospital shall ensure that all laboratory services provided to its patients through a contractual agreement are performed in a facility certified in the appropriate specialties and subspecialties of service in accordance with the requirements specified in 42 CFR Part 493 to comply with CLIA 1988.

(3) Adequacy of laboratory services. The hospital shall ensure the following.

(A) Emergency laboratory services shall be available 24 hours a day.

(B) A written description of services provided shall be available to the medical staff.

(C) The laboratory shall make provision for proper receipt and reporting of tissue specimens.

(D) The medical staff and a pathologist shall determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examination.

(E) When blood and blood components are stored, there shall be written procedures readily available containing directions on how to maintain them within permissible temperatures and including instructions to be followed in the event of a power failure or other disruption of refrigeration. A label or tray with the recipient's first and last names and identification number, donor unit number and interpretation of compatibility, if performed, shall be attached securely to the blood container.

(F) The hospital shall establish a mechanism for ensuring that the patient's physician or other licensed health care professional is made aware of critical value lab results, as established by the medical staff, before or after the patient is discharged.

(4) Chemical hygiene. A hospital that provides laboratory services shall adopt, implement, and enforce written policies and procedures to manage, minimize, or eliminate the risks to laboratory personnel of exposure to potentially hazardous chemicals in the laboratory which may occur during the normal course of job performance.

(i) Linen and laundry services. The hospital shall provide sufficient clean linen to ensure the comfort of the patient.

(1) For purposes of this subsection, contaminated linen is linen which has been soiled with blood or other potentially infectious materials or may contain sharps. Other potentially infectious materials means:

(A) the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(B) any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(C) Human Immunodeficiency Virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or Hepatitis B Virus (HBV)-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(2) The hospital, whether it operates its own laundry or uses commercial service, shall ensure the following.

(A) Employees of a hospital involved in transporting, processing, or otherwise handling clean or soiled linen shall be given initial and follow-up in-service training to ensure a safe product for patients and to safeguard employees in their work.

(B) Clean linen shall be handled, transported, and stored by methods that will ensure its cleanliness.

(C) All contaminated linen shall be placed and transported in bags or containers labeled or color-coded.

(D) Employees who have contact with contaminated linen shall wear gloves and other appropriate personal protective equipment.

(E) Contaminated linen shall be handled as little as possible and with a minimum of agitation. Contaminated linen shall not be sorted or rinsed in patient care areas.

(F) All contaminated linen shall be bagged or put into carts at the location where it was used.

(i) Bags containing contaminated linen shall be closed prior to transport to the laundry.

(ii) Whenever contaminated linen is wet and presents a reasonable likelihood of soak-through of or leakage from the bag or container, the linen shall be deposited and transported in bags that prevent leakage of fluids to the exterior.

(iii) All linen placed in chutes shall be bagged.

(iv) If chutes are not used to convey linen to a central receiving or sorting room, then adequate space shall be allocated on the various nursing units for holding the bagged contaminated linen.

(G) Linen shall be processed as follows:

(i) If hot water is used, linen shall be washed with detergent in water with a temperature of at least 71 degrees Centigrade (160 degrees Fahrenheit) for 25 minutes. Hot water requirements specified in Table 5 of §133.169(e) of this title (relating to Tables) shall be met.

(ii) If low-temperature (less than or equal to 70 degrees Centigrade) (158 degrees Fahrenheit) laundry cycles are used, chemicals suitable for low-temperature washing at proper use concentration shall be used.

(iii) Commercial dry cleaning of fabrics soiled with blood also renders these items free of the risk of pathogen transmission.

(H) Flammable liquids shall not be used to process laundry, but may be used for equipment maintenance.

(j) Medical record services. The hospital shall have a medical record service that has administrative responsibility for medical records. A medical record shall be maintained for every individual who presents to the hospital for evaluation or treatment.

(1) The organization of the medical record service shall be appropriate to the scope and complexity of the services performed. The hospital shall employ or contract with adequate personnel to ensure prompt completion, filing, and retrieval of records.

(2) The hospital shall have a system of coding and indexing medical records. The system shall allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) The hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with HSC, Chapter 241, Subchapter G (Disclosure of Health Care Information) and Subchapter E, §241.103 (Preservation of Records) and §241.1031 (relating to Preservation of Record from Forensic Medical Examination).

(4) The medical record shall contain information to justify admission and continued hospitalization, support the diagnosis, reflect significant changes in the patient's condition, and describe the patient's progress and response to medications and services. Medical records shall be accurately written, promptly completed, properly filed and retained, and accessible.

(5) If an attending physician issues a DNR order for a patient under Health and Safety Code, Chapter 166, Subchapter E (relat-

ing to Health Care Facility Do-Not-Resuscitate Orders), that order shall be entered into the patient medical record as soon as practicable. In the event a physician revokes a DNR order under Health and Safety Code, Chapter 166, Subchapter E, that revocation shall be entered into the patient medical record as soon as practicable. To the extent this paragraph conflicts with requirements elsewhere in this subsection, this paragraph prevails.

(6) Medical record entries must be legible, complete, dated, timed, and authenticated in written or electronic form by the person responsible for providing or evaluating the service provided, consistent with hospital policies and procedures.

(7) All orders (except verbal orders) must be dated, timed, and authenticated the next time the prescriber or another practitioner who is responsible for the care of the patient and has been credentialed by the medical staff and granted privileges which are consistent with the written orders provides care to the patient, assesses the patient, or documents information in the patient's medical record.

(8) All verbal orders must be dated, timed, and authenticated within 96 hours by the prescriber or another practitioner who is responsible for the care of the patient and has been credentialed by the medical staff and granted privileges which are consistent with the written orders.

(A) Use of signature stamps by physicians and other licensed practitioners credentialed by the medical staff may be allowed in hospitals when the signature stamp is authorized by the individual whose signature the stamp represents. The administrative offices of the hospital shall have on file a signed statement to the effect that he or she is the only one who has the stamp and uses it. The use of a signature stamp by any other person is prohibited.

(B) A list of computer codes and written signatures shall be readily available and shall be maintained under adequate safeguards.

(C) Signatures by facsimile shall be acceptable. If received on a thermal machine, the facsimile document shall be copied onto regular paper.

(9) Medical records (reports and printouts) shall be retained by the hospital in their original or legally reproduced form for a period of at least ten years. A legally reproduced form is a medical record retained in hard copy, microform (microfilm or microfiche), or other electronic medium. Films, scans, and other image records shall be retained for a period of at least five years. For retention purposes, medical records that shall be preserved for ten years include:

(A) identification data;

(B) the medical history of the patient;

(C) evidence of a physical examination, including a health history, performed no more than 30 days prior to admission or within 24 hours after admission. The medical history and physical examination shall be placed in the patient's medical record within 24 hours after admission;

(D) an updated medical record entry documenting an examination for any changes in the patient's condition when the medical history and physical examination are completed within 30 days before admission. This updated examination shall be completed and documented in the patient's medical record within 24 hours after admission;

(E) admitting diagnosis;

(F) diagnostic and therapeutic orders;

(G) properly executed informed consent forms for procedures and treatments specified by the medical staff, or by federal or state laws if applicable, to require written patient consent;

(H) clinical observations, including the results of therapy and treatment, all orders, nursing notes, medication records, vital signs, and other information necessary to monitor the patient's condition;

(I) reports of procedures, tests, and their results, including laboratory, pathology, and radiology reports;

(J) results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient;

(K) discharge summary with outcome of hospitalization, disposition of care, and provisions for follow-up care; and

(L) final diagnosis with completion of medical records within 30 calendar days following discharge.

(10) A hospital may not destroy a medical record from the forensic medical examination of a sexual assault victim until the 20th anniversary of the date the record was created, in accordance with HSC, Chapter 241, Subchapter E, §241.1031.

(11) If a patient was less than 18 years of age at the time he was last treated, the hospital may authorize the disposal of those medical records relating to the patient on or after the date of his 20th birthday or on or after the 10th anniversary of the date on which he was last treated, whichever date is later.

(12) The hospital shall not destroy medical records that relate to any matter that is involved in litigation if the hospital knows the litigation has not been finally resolved.

(13) The hospital shall provide written notice to a patient, or a patient's legally authorized representative, that the hospital may authorize the disposal of medical records relating to the patient on or after the periods specified in this section. The notice shall be provided to the patient or the patient's legally authorized representative not later than the date on which the patient who is or will be the subject of a medical record is treated, except in an emergency treatment situation. In an emergency treatment situation, the notice shall be provided to the patient or the patient's legally authorized representative as soon as is reasonably practicable following the emergency treatment situation.

(14) If a licensed hospital should close, the hospital shall notify the department at the time of closure the disposition of the medical records, including the location of where the medical records will be stored and the identity and telephone number of the custodian of the records.

(k) Medical staff.

(1) The medical staff shall be composed of physicians and may also be composed of podiatrists, dentists and other practitioners appointed by the governing body.

(A) The medical staff shall periodically conduct appraisals of its members according to medical staff bylaws.

(B) The medical staff shall examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidate.

(2) The medical staff shall be well-organized and accountable to the governing body for the quality of the medical care provided to patients.

(A) The medical staff shall be organized in a manner approved by the governing body.

(B) If the medical staff has an executive committee, a majority of the members of the committee shall be doctors of medicine or osteopathy.

(C) Records of medical staff meetings shall be maintained.

(D) The responsibility for organization and conduct of the medical staff shall be assigned only to an individual physician.

(E) Each medical staff member shall sign a statement signifying they will abide by medical staff and hospital policies.

(3) The medical staff shall adopt, implement, and enforce bylaws, rules, and regulations to carry out its responsibilities. The bylaws shall:

(A) be approved by the governing body;

(B) include a statement of the duties and privileges of each category of medical staff (e.g., active, courtesy, consultant);

(C) describe the organization of the medical staff;

(D) describe the qualifications to be met by a candidate in order for the medical staff to recommend that the candidate be appointed by the governing body;

(E) include criteria for determining the privileges to be granted and a procedure for applying the criteria to individuals requesting privileges;

(F) include a requirement that a physical examination and medical history be done no more than 30 days before or 24 hours after an admission for each patient by a physician or other qualified practitioner who has been granted these privileges by the medical staff. The medical history and physical examination shall be placed in the patient's medical record within 24 hours after admission. When the medical history and physical examination are completed within the 30 days before admission, an updated examination for any changes in the patient's condition must be completed and documented in the patient's medical record within 24 hours after admission; and

(G) include procedures regarding DNR orders issued in the hospital by an attending physician that comply with Health and Safety Code, Chapter 166, Subchapter E (relating to Health Care Facility Do-Not-Resuscitate Orders), including policies and procedures regarding the rights of a patient and person authorized to make treatment decisions regarding the patient's DNR status; notice and medical record requirements for DNR orders and revocations; and actions the attending physician and hospital must take pursuant to Health and Safety Code §166.206 when the attending physician or hospital and the patient or person authorized to make treatment decisions regarding the patient's DNR status are in disagreement about the execution of, or compliance with, a DNR order. The procedures shall include that:

(i) Except in circumstances described by Health and Safety Code §166.203(a)(2), a DNR order issued for a patient is valid only if the patient's attending physician issues the order, the order is dated, and the order is issued in compliance with:

(I) the written and dated directions of a patient who was competent at the time the patient wrote the directions;

(II) the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Health and Safety Code §166.003(2)(E) or (F);

(III) the directions in an advance directive enforceable under Health and Safety Code §166.005 or executed in accordance with Health and Safety Code §§166.032, 166.034, or 166.035;

(IV) the directions of a patient's legal guardian or agent under a medical power of attorney acting in accordance with Health and Safety Code, Chapter 166, Subchapter D (relating to Medical Power of Attorney); or

(V) a treatment decision made in accordance with Health Safety Code §166.039.

(ii) A DNR order that is not issued in accordance with Health and Safety Code §166.203(a)(1) is valid only if the patient's attending physician issues the order, the order is dated, and:

(I) the order is not contrary to the directions of a patient who was competent at the time the patient conveyed the directions;

(II) in the reasonable medical judgment of the patient's attending physician, the patient's death is imminent, regardless of the provision of cardiopulmonary resuscitation; and

(III) in the reasonable medical judgment of the patient's attending physician, the DNR order is medically appropriate.

(iii) A DNR order takes effect at the time the order is issued, as provided by Health and Safety Code §166.203(b).

(iv) Before placing in a patient's medical record a DNR order described by Health and Safety Code §166.203(a)(2), the physician, physician assistant, nurse, or other person acting on behalf of the hospital shall:

(I) notify the patient of the order's issuance; or

(II) if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance the patient's known agent under a medical power of attorney or legal guardian or, for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Health and Safety Code §166.039(b)(1), (2), or (3).

(v) A physician providing direct care to a patient for whom a DNR order is issued shall revoke the patient's DNR order if the patient or the patient's agent under a medical power of attorney or the patient's legal guardian if the patient is incompetent:

(I) effectively revokes an advance directive, in accordance with Health and Safety Code §166.042, for which a DNR order is issued under Health and Safety Code §166.203(a); or

(II) expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke a DNR order issued under Health and Safety Code §166.203(a).

(vi) A person providing direct care to a patient under the supervision of a physician shall notify the physician of the request to revoke a DNR order under Health and Safety Code §166.205(a).

(vii) A patient's attending physician may at any time revoke a DNR order executed under Health and Safety Code §166.203(a)(2).

(l) Mental health services.

(1) Mental health services unit. A hospital may not admit patients to a mental health services unit unless the unit is approved by the department as meeting the requirements of §133.163(q) of this title.

(2) Admission criteria. A hospital providing mental health services shall have written admission criteria that are applied uniformly to all patients who are admitted to the service.

(A) The hospital's admission criteria shall include procedures to prevent the admission of minors for a condition which is not generally recognized as responsive to treatment in an inpatient setting for mental health services.

(i) The following conditions are not generally recognized as responsive to treatment in a hospital unless the minor to be admitted is qualified because of other disabilities, such as:

(I) cognitive disabilities due to intellectual disability; or

(II) learning disabilities.

(ii) A minor may be qualified for admission based on other disabilities which would be responsive to mental health services.

(B) The medical record shall contain evidence that admission consent was given by the patient, the patient's legal guardian, or the managing conservator, if applicable.

(C) The hospital shall have a preadmission examination procedure under which each patient's condition and medical history are reviewed by a member of the medical staff to determine whether the patient is likely to benefit significantly from an intensive inpatient program or assessment.

(D) A voluntarily admitted patient shall sign an admission consent form prior to admission to a mental health unit which includes verification that the patient has been informed of the services to be provided and the estimated charges.

(3) Compliance. A hospital providing mental health services shall comply with the following rules administered by the department. The rules are:

(A) Chapter 411, Subchapter J of this title (relating to Standards of Care and Treatment in Psychiatric Hospitals);

(B) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(C) Chapter 405, Subchapter E of this title (relating to Electroconvulsive Therapy (ECT));

(D) Chapter 414, Subchapter I of this title (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services); and

(E) Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs).

(m) Mobile, transportable, and relocatable units. The hospital shall adopt, implement and enforce procedures which address the potential emergency needs for those inpatients who are taken to mobile units on the hospital's premises for diagnostic procedures or treatment.

(n) Nuclear medicine services. If the hospital provides nuclear medicine services, these services shall meet the needs of the patients in accordance with acceptable standards of practice and be licensed in accordance with §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material).

(1) Policies and procedures. Policies and procedures shall be adopted, implemented, and enforced which will describe the services nuclear medicine provides in the hospital and how employee and patient safety will be maintained.

(2) Organization and staffing. The organization of the nuclear medicine services shall be appropriate to the scope and complexity of the services offered.

(A) There shall be a medical director or clinical director who is a physician qualified in nuclear medicine.

(B) The qualifications, training, functions, and responsibilities of nuclear medicine personnel shall be specified by the medical director or clinical director and approved by the medical staff.

(3) Delivery of services. Radioactive materials shall be prepared, labeled, used, transported, stored, and disposed of in accordance with acceptable standards of practice and in accordance with §289.256 of this title.

(A) In-house preparation of radiopharmaceuticals shall be by, or under, the direct supervision of an appropriately trained licensed pharmacist or physician.

(B) There shall be proper storage and disposal of radioactive materials.

(C) If clinical laboratory tests are performed by the nuclear medicine services staff, the nuclear medicine staff shall comply with CLIA 1988 in accordance with the requirements specified in 42 CFR Part 493.

(D) Nuclear medicine workers shall be provided personnel monitoring dosimeters to measure their radiation exposure. Exposure reports and documentation shall be available for review.

(4) Equipment and supplies. Equipment and supplies shall be appropriate for the types of nuclear medicine services offered and shall be maintained for safe and efficient performance. The equipment shall be inspected, tested, and calibrated at least annually by qualified personnel.

(5) Records. The hospital shall maintain signed and dated reports of nuclear medicine interpretations, consultations, and procedures.

(A) The physician approved by the medical staff to interpret diagnostic procedures shall sign and date the interpretations of these tests.

(B) The hospital shall maintain records of the receipt and disposition of radiopharmaceuticals until disposal is authorized by the department's Radiation Safety Licensing Branch in accordance with §289.256 of this title.

(C) Nuclear medicine services shall be ordered only by an individual whose scope of state licensure and whose defined staff privileges allow such referrals.

(o) Nursing services. The hospital shall have an organized nursing service that provides 24-hour nursing services as needed.

(1) Organization. The hospital shall have a well-organized service with a plan of administrative authority and delineation of responsibilities for patient care.

(A) Nursing services shall be under the administrative authority of a chief nursing officer (CNO) who shall be an RN and comply with one of the following:

(i) possess a master's degree in nursing;

(ii) possess a master's degree in health care administration or business administration;

(iii) possess a master's degree in a health-related field obtained through a curriculum that included courses in administration and management; or

(iv) be progressing under a written plan to obtain the nursing administration qualifications associated with a master's degree in nursing. The plan shall:

(I) describe efforts to obtain the knowledge associated with graduate education and to increase administrative and management skills and experience;

(II) include courses related to leadership, administration, management, performance improvement and theoretical approaches to delivering nursing care; and

(III) provide a time-line for accomplishing skills.

(B) The CNO in hospitals with 100 or fewer licensed beds and located in counties with a population of less than 50,000, or in hospitals that have been certified by the Centers for Medicare and Medicaid Services as critical access hospitals in accordance with the Code of Federal Regulations, Title 42, Volume 3, Part 485, Subpart F, §485.606(b), shall be exempted from the requirements in subparagraph (A)(i) - (iv) of this paragraph.

(C) The CNO shall be responsible for the operation of the services, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the hospital.

(D) The CNO shall report directly to the individual who has authority to represent the hospital and who is responsible for the operation of the hospital according to the policies and procedures of the hospital's governing board.

(E) The CNO shall participate with leadership from the governing body, medical staff, and clinical areas, in planning, promoting and conducting performance improvement activities.

(2) Staffing and delivery of care.

(A) The nursing services shall adopt, implement and enforce a procedure to verify that hospital nursing personnel for whom licensure is required have valid and current licensure.

(B) There shall be adequate numbers of RNs, licensed vocational nurses (LVNs), and other personnel to provide nursing care to all patients as needed.

(C) There shall be supervisory and staff personnel for each department or nursing unit to provide, when needed, the immediate availability of an RN to provide care for any patient.

(D) An RN shall be on duty in each building of a licensed hospital that contains at least one nursing unit where patients are present. The RN shall supervise and evaluate the nursing care for each patient and assign the nursing care to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available.

(E) The nursing staff shall develop and keep current a nursing plan of care for each patient which addresses the patient's needs.

(F) The hospital shall establish a nurse staffing committee as a standing committee of the hospital. The committee shall be established in accordance with Health and Safety Code (HSC), §§161.031 - 161.033, to be responsible for soliciting and receiving input from nurses on the development, ongoing monitoring, and evaluation of the staffing plan. As provided by HSC, §161.032, the hospital's records and review relating to evaluation of these outcomes

and indicators are confidential and not subject to disclosure under Government Code, Chapter 552 and not subject to disclosure, discovery, subpoena or other means of legal compulsion for their release. As used in this subsection, "committee" or "staffing committee" means a nurse staffing committee established under this subparagraph.

(p) Outpatient services. If the hospital provides outpatient services, the services shall meet the needs of the patients in accordance with acceptable standards of practice.

(1) Organization. Outpatient services shall be appropriately organized and integrated with inpatient services.

(2) Personnel.

(A) The hospital shall assign an individual to be responsible for outpatient services.

(B) The hospital shall have appropriate physicians on staff and other professional and nonprofessional personnel available.

(q) Pharmacy services. The hospital shall provide pharmaceutical services that meet the needs of the patients.

(1) Compliance. The hospital shall provide a pharmacy which is licensed, as required, by the Texas State Board of Pharmacy. Pharmacy services shall comply with all applicable statutes and rules.

(2) Organization. The hospital shall have a pharmacy directed by a licensed pharmacist.

(3) Medical staff. The medical staff shall be responsible for developing policies and procedures that minimize drug errors. This function may be delegated to the hospital's organized pharmaceutical services.

(4) Pharmacy management and administration. The pharmacy or drug storage area shall be administered in accordance with accepted professional principles.

(A) Standards of practice as defined by state law shall be followed regarding the provision of pharmacy services.

(B) The pharmaceutical services shall have an adequate number of personnel to ensure quality pharmaceutical services including emergency services.

(i) The staff shall be sufficient in number and training to respond to the pharmaceutical needs of the patient population being served. There shall be an arrangement for emergency services.

(ii) Employees shall provide pharmaceutical services within the scope of their license and education.

(C) Drugs and biologicals shall be properly stored to ensure ventilation, light, security, and temperature controls.

(D) Records shall have sufficient detail to follow the flow of drugs from entry through dispensation.

(E) There shall be adequate controls over all drugs and medications including the floor stock. Drug storage areas shall be approved by the pharmacist, and floor stock lists shall be established.

(F) Inspections of drug storage areas shall be conducted throughout the hospital under pharmacist supervision.

(G) There shall be a drug recall procedure.

(H) A full-time, part-time, or consulting pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy services.

(i) Direction of pharmaceutical services may not require on-premises supervision but may be accomplished through regularly scheduled visits in accordance with state law.

(ii) A job description or other written agreement shall clearly define the responsibilities of the pharmacist.

(I) Current and accurate records shall be kept of the receipt and disposition of all scheduled drugs.

(i) There shall be a record system in place that provides the information on controlled substances in a readily retrievable manner which is separate from the patient record.

(ii) Records shall trace the movement of scheduled drugs throughout the services, documenting utilization or wastage.

(iii) The pharmacist shall be responsible for determining that all drug records are in order and that an account of all scheduled drugs is maintained and reconciled with written orders.

(5) Delivery of services. In order to provide patient safety, drugs and biologicals shall be controlled and distributed in accordance with applicable standards of practice, consistent with federal and state laws.

(A) All compounding, packaging, and dispensing of drugs and biologicals shall be under the supervision of a pharmacist and performed consistent with federal and state laws.

(B) All drugs and biologicals shall be kept in a secure area, and locked when appropriate.

(i) A policy shall be adopted, implemented, and enforced to ensure the safeguarding, transferring, and availability of keys to the locked storage area.

(ii) Drugs listed in Schedules II, III, IV, and V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 shall be kept locked within a secure area.

(C) Outdated, mislabeled, or otherwise unusable drugs and biologicals shall not be available for patient use.

(D) When a pharmacist is not available, drugs and biologicals shall be removed from the pharmacy or storage area only by personnel designated in the policies of the medical staff and pharmaceutical service, in accordance with federal and state laws.

(i) There shall be a current list of individuals identified by name and qualifications who are designated to remove drugs from the pharmacy.

(ii) Only amounts sufficient for immediate therapeutic needs shall be removed.

(E) Drugs and biologicals not specifically prescribed as to time or number of doses shall automatically be stopped after a reasonable time that is predetermined by the medical staff.

(i) Stop order policies and procedures shall be consistent with those of the nursing staff and the medical staff rules and regulations.

(ii) A protocol shall be established by the medical staff for the implementation of the stop order policy, in order that drugs shall be reviewed and renewed, or automatically stopped.

(iii) A system shall be in place to determine compliance with the stop order policy.

(F) Drug administration errors, adverse drug reactions, and incompatibilities shall be immediately reported to the attending physician and, if appropriate, to the hospital-wide quality assessment

and performance improvement program. There shall be a mechanism in place for capturing, reviewing, and tracking medication errors and adverse drug reactions.

(G) Abuses and losses of controlled substances shall be reported, in accordance with applicable federal and state laws, to the individual responsible for the pharmaceutical services, and to the chief executive officer, as appropriate.

(H) Information relating to drug interactions and information on drug therapy, side effects, toxicology, dosage, indications for use, and routes of administration shall be immediately available to the professional staff.

(i) A pharmacist shall be readily accessible by telephone or other means to discuss drug therapy, interactions, side effects, dosage, assist in drug selection, and assist in the identification of drug induced problems.

(ii) There shall be staff development programs on drug therapy available to facility staff to cover such topics as new drugs added to the formulary, how to resolve drug therapy problems, and other general information as the need arises.

(I) A formulary system shall be established by the medical staff to ensure quality pharmaceuticals at reasonable costs.

(r) Quality assessment and performance improvement. The governing body shall ensure that there is an effective, ongoing, hospital-wide, data-driven quality assessment and performance improvement (QAPI) program to evaluate the provision of patient care.

(1) Program scope. The hospital-wide QAPI program shall reflect the complexity of the hospital's organization and services and have a written plan of implementation. The program must include an ongoing program that shows measurable improvements in the indicators for which there is evidence that they will improve health outcomes, and identify and reduce medical errors.

(A) All hospital departments and services, including services furnished under contract or arrangement shall be evaluated.

(B) Health care associated infections shall be evaluated.

(C) Medication therapy shall be evaluated.

(D) All medical and surgical services performed in the hospital shall be evaluated as they relate to appropriateness of diagnosis and treatment.

(E) The program must measure, analyze and track quality indicators, including adverse patients' events, and other aspects of performance that assess processes of care, hospital services and operations.

(F) Data collected must be used to monitor the effectiveness and safety of service and quality of care, and to identify opportunities for changes that will lead to improvement.

(G) Priorities must be established for performance improvement activities that focus on high-risk, high-volume, or problem-prone areas, taking into consideration the incidence, prevalence and severity of problems in those areas, and how health outcomes and quality of care may be affected.

(H) Performance improvement activities which affect patient safety, including analysis of medical errors and adverse patient events, must be established, and preventive actions implemented.

(I) Success of actions implemented as a result of performance improvement activities must be measured, and ongoing performance must be tracked to ensure improvements are sustained.

(2) Responsibility and accountability. The hospital's governing body, medical staff and administrative staff are responsible and accountable for ensuring that:

(A) an ongoing program for quality improvement is defined, implemented and maintained, and that program requirements are met;

(B) an ongoing program for patient safety, including reduction of medical errors, is defined, implemented and maintained;

(C) the hospital-wide QAPI efforts address priorities for improved quality of care and patient safety, and that all improvement actions are evaluated; and

(D) adequate resources are allocated for measuring, assessing, improving and sustaining the hospital's resources, and for reducing risk to patients.

(3) Medically-related patient care services. The hospital shall have an ongoing plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services to meet the medically-related needs of its patients. The hospital also shall have an effective, ongoing discharge planning program that facilitates the provision of follow-up care.

(A) Discharge planning shall be completed prior to discharge.

(B) Patients, along with necessary medical information, shall be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed for follow-up or ancillary care.

(C) Screening and evaluation before patient discharge from hospital. In accordance with 42 Code of Federal Regulations (CFR), Part 483, Subpart C (relating to Requirements for Long Term Care Facilities) and the rules of the Department of Aging and Disability Services (DADS) set forth in 40 TAC Chapter 17 (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the hospital to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the hospital and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability. If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the hospital shall contact and arrange for the local mental health authority designated pursuant to Health and Safety Code, §533.035, to conduct prior to hospital discharge an evaluation of the patient in accordance with the applicable provisions of the PASRR rules. The purpose of PASRR is:

(i) to ensure that placement of the patient in a nursing facility is necessary;

(ii) to identify alternate placement options when applicable; and

(iii) to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(4) Implementation. The hospital must take actions aimed at performance improvement and, after implementing those actions, the hospital must measure its success, and track performance to ensure that improvements are sustained.

(s) Radiology services. The hospital shall maintain, or have available, diagnostic radiologic services according to needs of the patients. All radiology equipment, including X-ray equipment, mammography equipment and laser equipment, shall be licensed and registered as required under Chapter 289 of this title (relating to Radiation Control). If therapeutic services are also provided, the services, as well

as the diagnostic services, shall meet professionally approved standards for safety and personnel qualifications as required in §§289.227, 289.229, 289.230 and 289.231 of this title (relating to Registration Regulations). In a special hospital, portable X-ray equipment may be acceptable as a minimum requirement.

(1) Policies and procedures. Policies and procedures shall be adopted, implemented and enforced which will describe the radiology services provided in the hospital and how employee and patient safety will be maintained.

(2) Safety for patients and personnel. The radiology services, particularly ionizing radiology procedures, shall minimize hazards to patients and personnel.

(A) Proper safety precautions shall be maintained against radiation hazards. This includes adequate radiation shielding, safety procedures and equipment maintenance and testing.

(B) Inspection of equipment shall be made by or under the supervision of a licensed medical physicist in accordance with §289.227(o) of this title (relating to Use of Radiation Machines in the Healing Arts). Defective equipment shall be promptly repaired or replaced.

(C) Radiation workers shall be provided personnel monitoring dosimeters to measure the amount of radiation exposure they receive. Exposure reports and documentation shall be available for review.

(D) Radiology services shall be provided only on the order of individuals granted privileges by the medical staff.

(3) Personnel.

(A) A qualified full-time, part-time, or consulting radiologist shall supervise the ionizing radiology services and shall interpret only those radiology tests that are determined by the medical staff to require a radiologist's specialized knowledge. For purposes of this section a radiologist is a physician who is qualified by education and experience in radiology in accordance with medical staff bylaws.

(B) Only personnel designated as qualified by the medical staff shall use the radiology equipment and administer procedures.

(4) Records. Records of radiology services shall be maintained. The radiologist or other individuals who have been granted privileges to perform radiology services shall sign reports of his or her interpretations.

(t) Renal dialysis services.

(1) Hospitals may provide inpatient dialysis services without an additional license under HSC Chapter 251. Hospitals providing outpatient dialysis services shall be licensed under HSC Chapter 251.

(2) Hospitals may provide outpatient dialysis services when the governor or the president of the United States declares a disaster in this state or another state. The hospital may provide outpatient dialysis only during the term of the disaster declaration.

(3) Equipment.

(A) Maintenance and repair. All equipment used by a facility, including backup equipment, shall be operated within manufacturer's specifications, and maintained free of defects which could be a potential hazard to patients, staff, or visitors. Maintenance and repair of all equipment shall be performed by qualified staff or contract personnel.

(i) Staff shall be able to identify malfunctioning equipment and report such equipment to the appropriate staff for immediate repair.

(ii) Medical equipment that malfunctions must be clearly labeled and immediately removed from service until the malfunction is identified and corrected.

(iii) Written evidence of all maintenance and repairs shall be maintained.

(iv) After repairs or alterations are made to any equipment or system, the equipment or system shall be thoroughly tested for proper operation before returning to service. This testing must be documented.

(v) A facility shall comply with the federal Food, Drug, and Cosmetic Act, 21 United States Code (USC), §360i(b), concerning reporting when a medical device as defined in 21 USC §321(h) has or may have caused or contributed to the injury or death of a patient of the facility.

(B) Preventive maintenance. A facility shall develop, implement and enforce a written preventive maintenance program to ensure patient care related equipment used in a facility receives electrical safety inspections, if appropriate, and maintenance at least annually or more frequently as recommended by the manufacturer. The preventive maintenance may be provided by facility staff or by contract.

(C) Backup machine. At least one complete dialysis machine shall be available on site as backup for every ten dialysis machines in use. At least one of these backup machines must be completely operational during hours of treatment. Machines not in use during a patient shift may be counted as backup except at the time of an initial or an expansion survey.

(D) Pediatric patients. If pediatric patients are treated, a facility shall use equipment and supplies, to include blood pressure cuffs, dialyzers, and blood tubing, appropriate for this special population.

(E) Emergency equipment and supplies. A facility shall have emergency equipment and supplies immediately accessible in the treatment area.

(i) At a minimum, the emergency equipment and supplies shall include the following:

(I) oxygen;

(II) mechanical ventilatory assistance equipment, to include airways, manual breathing bag, and mask;

(III) suction equipment;

(IV) supplies specified by the medical director;

(V) electrocardiograph; and

(VI) automated external defibrillator or defibrillator.

(ii) If pediatric patients are treated, the facility shall have the appropriate type and size emergency equipment and supplies listed in clause (i) of this subparagraph for this special population.

(iii) A facility shall establish, implement, and enforce a policy for the periodic testing and maintenance of the emergency equipment. Staff shall properly maintain and test the emergency equipment and supplies and document the testing and maintenance.

(F) Transducer protector. A transducer protector shall be replaced when wetted during a dialysis treatment and shall be used for one treatment only.

(4) Water treatment and dialysate concentrates.

(A) Compliance required. A facility shall meet the requirements of this section. A facility may follow more stringent requirements than the minimum standards required by this section.

(i) The facility administrator and medical director shall each demonstrate responsibility for the water treatment and dialysate supply systems to protect hemodialysis patients from adverse effects arising from known chemical and microbial contaminants that may be found in improperly prepared dialysate, to ensure that the dialysate is correctly formulated and meets the requirements of all applicable quality standards.

(ii) The facility administrator and medical director must assure that policies and procedures related to water treatment and dialysate are understandable and accessible to the operator(s) and that the training program includes quality testing, risks and hazards of improperly prepared concentrate and bacterial issues.

(iii) The facility administrator and medical director must be informed prior to any alteration of, or any device being added to, the water system.

(B) Water treatment. These requirements apply to water intended for use in the delivery of hemodialysis, including the preparation of concentrates from powder at a dialysis facility and dialysate.

(i) The design for the water treatment system in a facility shall be based on considerations of the source water for the facility and designed by a water quality professional with education, training, or experience in dialysis system design.

(ii) When a public water system supply is not used by a facility, the source water shall be tested by the facility at monthly intervals in the same manner as a public water system as described in 30 TAC §290.104 (relating to Summary of Maximum Contaminant Levels, Maximum Residual Disinfectant Levels, Treatment Techniques, and Action Levels), and §290.109 (relating to Microbial Contaminants) as adopted by the Texas Commission on Environmental Quality (TCEQ).

(iii) The physical space in which the water treatment system is located must be adequate to allow for maintenance, testing, and repair of equipment. If mixing of dialysate is performed in the same area, the physical space must also be adequate to house and allow for the maintenance, testing, and repair of the mixing equipment and for performing the mixing procedure.

(iv) The water treatment system components shall be arranged and maintained so that bacterial and chemical contaminant levels in the product water do not exceed the standards for hemodialysis water quality described in §4.2.1 (concerning Water Bacteriology) and §4.2.2 (concerning Maximum Level of Chemical Contaminants) of the American National Standard, Water Treatment Equipment for Hemodialysis Applications, August 2001 Edition, published by the Association for the Advancement of Medical Instrumentation (AAMI). All documents published by the AAMI as referenced in this section may be obtained by writing the following address: 1110 North Glebe Road, Suite 220, Arlington, Virginia 22201.

(v) Written policies and procedures for the operation of the water treatment system must be developed and implemented. Parameters for the operation of each component of the water treatment system must be developed in writing and known to the operator. Each major water system component shall be labeled in a manner that identi-

fies the device; describes its function, how performance is verified and actions to take in the event performance is not within an acceptable range.

(vi) The materials of any components of water treatment systems (including piping, storage, filters and distribution systems) that contact the purified water shall not interact chemically or physically so as to affect the purity or quality of the product water adversely. Such components shall be fabricated from unreactive materials (e.g. plastics) or appropriate stainless steel. The use of materials that are known to cause toxicity in hemodialysis, such as copper, brass, galvanized material, or aluminum, is prohibited.

(vii) Chemicals infused into the water such as iodine, acid, flocculants, and complexing agents shall be shown to be nondialyzable or shall be adequately removed from product water. Monitors or specific test procedures to verify removal of additives shall be provided and documented.

(viii) Each water treatment system shall include reverse osmosis membranes or deionization tanks and a minimum of two carbon tanks in series. If the source water is from a private supply which does not use chlorine/chloramine, the water treatment system shall include reverse osmosis membranes or deionization tanks and a minimum of one carbon tank.

(I) Reverse osmosis membranes. Reverse osmosis membranes, if used, shall meet the standards in §4.3.7 (concerning Reverse Osmosis) of the American National Standard, Water Treatment Equipment for Hemodialysis Applications, August 2001 Edition, published by the AAMI.

(II) Deionization systems.

(-a-) Deionization systems, if used, shall be monitored continuously to produce water of one megohm-centimeter (cm) or greater specific resistivity (or conductivity of one microsiemen/cm or less) at 25 degrees Celsius. An audible and visual alarm shall be activated when the product water resistivity falls below this level and the product water stream shall be prevented from reaching any point of use.

(-b-) Patients shall not be dialyzed on deionized water with a resistivity less than 1.0 megohm-cm measured at the output of the deionizer.

(-c-) A minimum of two deionization (DI) tanks in series shall be used with resistivity monitors including audible and visual alarms placed pre and post the final DI tank in the system. The alarms must be audible in the patient care area.

(-d-) Feed water for deionization systems shall be pretreated with activated carbon adsorption, or a comparable alternative, to prevent nitrosamine formation.

(-e-) If a deionization system is the last process in a water treatment system, it shall be followed by an ultrafilter or other bacteria and endotoxin reducing device.

(III) Carbon tanks.

(-a-) The carbon tanks must contain acid washed carbon, 30-mesh or smaller with a minimum iodine number of 900.

(-b-) A minimum of two carbon adsorption beds shall be installed in a series configuration.

(-c-) The total empty bed contact time (EBCT) shall be at least ten minutes, with the final tank providing at least five minutes EBCT. Carbon adsorption systems used to prepare water for portable dialysis systems are exempt from the requirement for the second carbon and a ten minute EBCT if removal of chloramines to below 0.1 milligram (mg)/l is verified before each treatment.

(-d-) A means shall be provided to sample the product water immediately prior to the final bed(s). Water from this port(s) must be tested for chlorine/chloramine levels immediately prior to each patient shift.

(-e-) All samples for chlorine/chloramine testing must be drawn when the water treatment system has been operating for at least 15 minutes.

(-f-) Tests for total chlorine, which include both free and combined forms of chlorine, may be used as a single analysis with the maximum allowable concentration of 0.1 mg/liter (L). Test results of greater than 0.5 parts per million (ppm) for chlorine or 0.1 ppm for chloramine from the port between the initial tank(s) and final tank(s) shall require testing to be performed at the final exit and replacement of the initial tank(s).

(-g-) In a system without a holding tank, if test results at the exit of the final tank(s) are greater than the parameters for chlorine or chloramine described in this subclause, dialysis treatment shall be immediately terminated to protect patients from exposure to chlorine/chloramine and the medical director shall be notified. In systems with holding tanks, if the holding tank tests <1 mg/L for total chlorine, the reverse osmosis (RO) may be turned off and the product water in the holding tank may be used to finish treatments in process. The medical director shall be notified.

(-h-) If means other than granulated carbon are used to remove chlorine/chloramine, the facility's governing body must approve such use in writing after review of the safety of the intended method for use in hemodialysis applications. If such methods include the use of additives, there must be evidence the product water does not contain unsafe levels of these additives.

(ix) Water softeners, if used, shall be tested at the end of the treatment day to verify their capacity to treat a sufficient volume of water to supply the facility for the entire treatment day and shall be fitted with a mechanism to prevent water containing the high concentrations of sodium chloride used during regeneration from entering the product water line during regeneration.

(x) If used, the face(s) of timer(s) used to control any component of the water treatment or dialysate delivery system shall be visible to the operator at all times. Written evidence that timers are checked for operation and accuracy each day of operation must be maintained.

(xi) Filter housings, if used during disinfectant procedures, shall include a means to clear the lower portion of the housing of the disinfecting agents. Filter housings shall be opaque.

(xii) Ultrafilters, or other bacterial reducing filters, if used, shall be fitted with pressure gauges on the inlet and outlet water lines to monitor the pressure drop across the membrane. Ultrafilters shall be included in routine disinfection procedures.

(xiii) If used, storage tanks shall have a conical or bowl shaped base and shall drain from the lowest point of the base. Storage tanks shall have a tight-fitting lid and be vented through a hydrophobic 0.2 micron air filter. Means shall be provided to effectively disinfect any storage tank installed in a water distribution system.

(xiv) Ultraviolet (UV) lights, if used, shall be monitored at the frequency recommended by the manufacturer. A log sheet shall be used to record monitoring.

(xv) Water treatment system piping shall be labeled to indicate the contents of the pipe and direction of flow.

(xvi) The water treatment system must be continuously monitored during patient treatment and be guarded by audible and visual alarms which can be seen and heard in the dialysis treat-

ment area should water quality drop below specific parameters. Quality monitor sensing cells shall be located as the last component of the water treatment system and at the beginning of the distribution system. No water treatment components that could affect the quality of the product water as measured by this device shall be located after the sensing cell.

(xvii) When deionization tanks do not follow a reverse osmosis system, parameters for the rejection rate of the membranes must assure that the lowest rate accepted would provide product water in compliance with §4.2.2 (concerning Maximum Level of Chemical Contaminants) of the American National Standard, Water Treatment Equipment for Hemodialysis Applications, August 2001 Edition published by the AAMI.

(xviii) A facility shall maintain written logs of the operation of the water treatment system for each treatment day. The log book shall include each component's operating parameter and the action taken when a component is not within the facility's set parameters.

(xix) Microbiological testing of product water shall be conducted.

(I) Frequency. Microbiological testing shall be conducted monthly and following any repair or change to the water treatment system. For a newly installed water distribution system, or when a change has been made to an existing system, weekly testing shall be conducted for one month to verify that bacteria and endotoxin levels are consistently within the allowed limits.

(II) Sample sites. At a minimum, sample sites chosen for the testing shall include the beginning of the distribution piping, at any site of dialysate mixing, and the end of the distribution piping.

(III) Technique. Samples shall be collected immediately before sanitization/disinfection of the water treatment system and dialysis machines. Water testing results shall be routinely trended and reviewed by the medical director in order to determine if results seem questionable or if there is an opportunity for improvement. The medical director shall determine if there is a need for retesting. Repeated results of "no growth" shall be validated via an outside laboratory. A calibrated loop may not be used in microbiological testing of water samples. Colonies shall be counted using a magnifying device.

(IV) Expected results. Product water used to prepare dialysate, concentrates from powder, or to reprocess dialyzers for multiple use, shall contain a total viable microbial count less than 200 colony forming units (CFU)/millimeter (ml) and an endotoxin concentration less than 2 endotoxin units (EU)/ml. The action level for the total viable microbial count in the product water shall be 50 CFU/ml and the action level for the endotoxin concentration shall be 1 EU/ml.

(V) Required action for unacceptable results. If the action levels described at subclause (IV) of this clause are observed in the product water, corrective measures shall be taken promptly to reduce the levels into an acceptable range.

(VI) Records. All bacteria and endotoxin results shall be recorded on a log sheet in order to identify trends that may indicate the need for corrective action.

(xx) If ozone generators are used to disinfect any portion of the water or dialysate delivery system, testing based on the manufacturer's direction shall be used to measure the ozone concentration each time disinfection is performed, to include testing for safe levels of residual ozone at the end of the disinfection cycle. Testing for ozone in the ambient air shall be conducted on a periodic basis as rec-

ommended by the manufacturer. Records of all testing must be maintained in a log.

(xxi) If used, hot water disinfection systems shall be monitored for temperature and time of exposure to hot water as specified by the manufacturer. Temperature of the water shall be recorded at a point furthest from the water heater, where the lowest water temperature is likely to occur. The water temperature shall be measured each time a disinfection cycle is performed. A record that verifies successful completion of the heat disinfection shall be maintained.

(xxii) After chemical disinfection, means shall be provided to restore the equipment and the system in which it is installed to a safe condition relative to residual disinfectant prior to the product water being used for dialysis applications.

(xxiii) Samples of product water must be submitted for chemical analysis every six months and must demonstrate that the quality of the product water used to prepare dialysate or concentrates from powder, meets §4.2.2 (concerning Maximum Level of Chemical Contaminants) of the American National Standard, Water Treatment Equipment for Hemodialysis Applications, August 2001 Edition, published by the AAMI.

(I) Samples for chemical analysis shall be collected at the end of the water treatment components and at the most distal point in each water distribution loop, if applicable. All other outlets from the distribution loops shall be inspected to ensure that the outlets are fabricated from compatible materials. Appropriate containers and pH adjustments shall be used to ensure accurate determinations. New facilities or facilities that add or change the configuration of the water distribution system must draw samples at the most distal point for each water distribution loop, if applicable, on a one time basis.

(II) Additional chemical analysis shall be submitted if substantial changes are made to the water treatment system or if the percent rejection of a reverse osmosis system decreased 5.0% or more from the percent rejection measured at the time the water sample for the preceding chemical analysis was taken.

(xxiv) Facility records must include all test results and evidence that the medical director has reviewed the results of the water quality testing and directed corrective action when indicated.

(xxv) Only persons qualified by the education or experience may operate, repair, or replace components of the water treatment system.

(C) Dialysate.

(i) Quality control procedures shall be established to ensure ongoing conformance to policies and procedures regarding dialysate quality.

(ii) Each facility shall set all hemodialysis machines to use only one family of concentrates. When new machines are put into service or the concentrate family or concentrate manufacturer is changed, samples shall be sent to a laboratory for verification.

(iii) Prior to each patient treatment, staff shall verify the dialysate conductivity and pH of each machine with an independent device.

(iv) Bacteriological testing shall be conducted.

(I) Frequency. Responsible facility staff shall develop a schedule to ensure each hemodialysis machine is tested quarterly for bacterial growth and the presence of endotoxins. Hemodialysis machines of home patients shall be cultured monthly until results not exceeding 200 CFU/ml are obtained for three consecutive months, then quarterly samples shall be cultured.

(II) Acceptable limits. Dialysate shall contain less than 200 CFU/ml and an endotoxin concentration of less than 2 EU/ml. The action level for total viable microbial count shall be 50 CFU/ml and the action level for endotoxin concentration shall be 1 EU/ml.

(III) Action to be taken. Disinfection and retesting shall be done when bacterial or endotoxin counts exceed the action levels. Additional samples shall be collected when there is a clinical indication of a pyrogenic reaction and/or septicemia.

(v) Only a licensed nurse may use an additive to increase concentrations of specific electrolytes in the acid concentrate. Mixing procedures shall be followed as specified by the additive manufacturer. When additives are prescribed for a specific patient, the container holding the prescribed acid concentrate shall be labeled with the name of the patient, the final concentration of the added electrolyte, the date the prescribed concentrate was made, and the name of the person who mixed the additive.

(vi) All components used in concentrate preparation systems (including mixing and storage tanks, pumps, valves and piping) shall be fabricated from materials (e.g., plastics or appropriate stainless steel) that do not interact chemically or physically with the concentrate so as to affect its purity, or with the germicides used to disinfect the equipment. The use of materials that are known to cause toxicity in hemodialysis such as copper, brass, galvanized material and aluminum is prohibited.

(vii) Facility policies shall address means to protect stored acid concentrates from tampering or from degeneration due to exposure to extreme heat or cold.

(viii) Procedures to control the transfer of acid concentrates from the delivery container to the storage tank and prevent the inadvertent mixing of different concentrate formulations shall be developed, implemented and enforced. The storage tanks shall be clearly labeled.

(ix) Concentrate mixing systems shall include a purified water source, a suitable drain, and a ground fault protected electrical outlet.

(I) Operators of mixing systems shall use personal protective equipment as specified by the manufacturer during all mixing processes.

(II) The manufacturer's instructions for use of a concentrate mixing system shall be followed, including instructions for mixing the powder with the correct amount of water. The number of bags or weight of powder added shall be determined and recorded.

(III) The mixing tank shall be clearly labeled to indicate the fill and final volumes required to correctly dilute the powder.

(IV) Systems for preparing either bicarbonate or acid concentrate from powder shall be monitored according to the manufacturer's instructions.

(V) Concentrates shall not be used, or transferred to holding tanks or distribution systems, until all tests are completed.

(VI) If a facility designs its own system for mixing concentrates, procedures shall be developed and validated using an independent laboratory to ensure proper mixing.

(x) Acid concentrate mixing tanks shall be designed to allow the inside of the tank to be rinsed when changing concentrate formulas.

(I) Acid mixing systems shall be designed and maintained to prevent rust and corrosion.

(II) Acid concentrate mixing tanks shall be emptied completely and rinsed with product water before mixing another batch of concentrate to prevent cross contamination between different batches.

(III) Acid concentrate mixing equipment shall be disinfected as specified by the equipment manufacturer or in the case where no specifications are given, as defined by facility policy.

(IV) Records of disinfection and rinsing of disinfectants to safe residual levels shall be maintained.

(xi) Bicarbonate concentrate mixing tanks shall have conical or bowl shaped bottoms and shall drain from the lowest point of the base. The tank design shall allow all internal surfaces to be disinfected and rinsed.

(I) Bicarbonate concentrate mixing tanks shall not be refilled the night before use.

(II) If disinfectant remains in the mixing tank overnight, this solution must be completely drained, the tank rinsed and tested for residual disinfectant prior to preparing the first batch of that day of bicarbonate concentrate.

(III) Unused portions of bicarbonate concentrate shall not be mixed with fresh concentrate.

(IV) At a minimum, bicarbonate distribution systems shall be disinfected weekly. More frequent disinfection shall be done if required by the manufacturer, or if dialysate culture results are above the action level.

(V) If jugs are reused to deliver bicarbonate concentrate to individual hemodialysis machines:

(-a-) jugs shall be emptied of concentrate, rinsed and inverted to drain at the end of each treatment day;

(-b-) at a minimum, jugs shall be disinfected weekly, more frequent disinfection shall be considered by the medical director if dialysate culture results are above the action level; and

(-c-) following disinfection, jugs shall be drained, rinsed free of residual disinfectant, and inverted to dry. Testing for residual disinfectant shall be done and documented.

(xii) All mixing tanks, bulk storage tanks, dispensing tanks and containers for single hemodialysis treatments shall be labeled as to the contents.

(I) Mixing tanks. Prior to batch preparation, a label shall be affixed to the mixing tank that includes the date of preparation and the chemical composition or formulation of the concentrate being prepared. This labeling shall remain on the mixing tank until the tank has been emptied.

(II) Bulk storage/dispensing tanks. These tanks shall be permanently labeled to identify the chemical composition or formulation of their contents.

(III) Single machine containers. At a minimum, single machine containers shall be labeled with sufficient information to differentiate the contents from other concentrate formulations used in the facility and permit positive identification by users of container contents.

(xiii) Permanent records of batches produced shall be maintained to include the concentrate formula produced, the volume of the batch, lot number(s) of powdered concentrate packages, the manufacturer of the powdered concentrate, date and time of mixing,

test results, person performing mixing, and expiration date (if applicable).

(xiv) If dialysate concentrates are prepared in the facility, the manufacturers' recommendations shall be followed regarding any preventive maintenance. Records shall be maintained indicating the date, time, person performing the procedure, and the results (if applicable).

(5) Prevention requirements concerning patients.

(A) Hepatitis B vaccination.

(i) With the advice and consent of a patient's attending nephrologist, facility staff shall make the hepatitis B vaccine available to a patient who is susceptible to hepatitis B, provided that the patient has coverage or is willing to pay for vaccination.

(ii) The facility shall make available to patients literature describing the risks and benefits of the hepatitis B vaccination.

(B) Serologic screening of patients.

(i) A patient new to dialysis shall have been screened for hepatitis B surface antigen (HBsAg) within one month before or at the time of admission to the facility or have a known hepatitis B surface antibody (anti-HBs) status of at least 10 milli-international units per milliliter no more than 12 months prior to admission. The facility shall document how this screening requirement is met.

(ii) Repeated serologic screening shall be based on the antigen or antibody status of the patient.

(I) Monthly screening for HBsAg is required for patients whose previous test results are negative for HBsAg.

(II) Screening of HBsAg-positive or anti-HBs-positive patients may be performed on a less frequent basis, provided that the facility's policy on this subject remains congruent with Appendices i and ii of the National Surveillance of Dialysis Associated Disease in the United States, 2000, published by the United States Department of Health and Human Services.

(C) Isolation procedures for the HBsAg-positive patient.

(i) The facility shall treat patients positive for HBsAg in a segregated treatment area which includes a hand washing sink, a work area, patient care supplies and equipment, and sufficient space to prevent cross-contamination to other patients.

(ii) A patient who tests positive for HBsAg shall be dialyzed on equipment reserved and maintained for the HBsAg-positive patient's use only.

(iii) When a caregiver is assigned to both HBsAg-negative and HBsAg-positive patients, the HBsAg-negative patients assigned to this grouping must be Hepatitis B antibody positive. Hepatitis B antibody positive patients are to be seated at the treatment stations nearest the isolation station and be assigned to the same staff member who is caring for the HBsAg-positive patient.

(iv) If an HBsAg-positive patient is discharged, the equipment which had been reserved for that patient shall be given intermediate level disinfection prior to use for a patient testing negative for HBsAg.

(v) In the case of patients new to dialysis, if these patients are admitted for treatment before results of HBsAg or anti-HBs testing are known, these patients shall undergo treatment as if the HBsAg test results were potentially positive, except that they shall not be treated in the HBsAg isolation room, area, or machine.

(I) The facility shall treat potentially HBsAg-positive patients in a location in the treatment area which is outside of traffic patterns until the HBsAg test results are known.

(II) The dialysis machine used by this patient shall be given intermediate level disinfection prior to its use by another patient.

(III) The facility shall obtain HBsAg status results of the patient no later than three days from admission.

(u) Respiratory care services. The hospital shall meet the needs of the patients in accordance with acceptable standards of practice.

(1) Policies and procedures shall be adopted, implemented, and enforced which describe the provision of respiratory care services in the hospital.

(2) The organization of the respiratory care services shall be appropriate to the scope and complexity of the services offered.

(3) There shall be a medical director or clinical director of respiratory care services who is a physician with the knowledge, experience, and capabilities to supervise and administer the services properly. The medical director or clinical director may serve on either a full-time or part-time basis.

(4) There shall be adequate numbers of respiratory therapists, respiratory therapy technicians, and other personnel who meet the qualifications specified by the medical staff, consistent with the state law.

(5) Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures shall be designated in writing.

(6) If blood gases or other clinical laboratory tests are performed by the respiratory care services staff, the respiratory care staff shall comply with CLIA 1988 in accordance with the requirements specified in 42 CFR, Part 493.

(7) Services shall be provided only on, and in accordance with, the orders of a physician.

(v) Sterilization and sterile supplies.

(1) Supervision. The sterilization of all supplies and equipment shall be under the supervision of a person qualified by education, training and experience. Staff responsible for the sterilization of supplies and equipment shall participate in a documented continuing education program; new employees shall receive initial orientation and on-the-job training.

(2) Equipment and procedures.

(A) Sterilization. Every hospital shall provide equipment adequate for sterilization of supplies and equipment as needed. Equipment shall be maintained and operated to perform, with accuracy, the sterilization of the various materials required.

(B) Written policy. Written policies and procedures for the decontamination and sterilization activities performed shall be adopted, implemented and enforced. Policies shall include the receiving, cleaning, decontaminating, disinfecting, preparing and sterilization of reusable items, as well as those for the assembly, wrapping, storage, distribution and quality control of sterile items and equipment. These written policies shall be reviewed at least every other year and approved by the infection control practitioner or committee.

(C) Separation. Where cleaning, preparation, and sterilization functions are performed in the same room or unit, the physical

facilities, equipment, and the policies and procedures for their use, shall be such as to effectively separate soiled or contaminated supplies and equipment from the clean or sterilized supplies and equipment. Hand washing facilities shall be provided and a separate sink shall be provided for safe disposal of liquid waste.

(D) Labeling. All containers for solutions, drugs, flammable solvents, ether, alcohol, and medicated supplies shall be clearly labeled to indicate contents. Those which are sterilized by the hospital shall be labeled so as to be identifiable both before and after sterilization. Sterilized items shall have a load control identification that indicates the sterilizer used, the cycle or load number, and the date of sterilization.

(E) Preparation for sterilization.

(i) All items to be sterilized shall be prepared to reduce the bioburden. All items shall be thoroughly cleaned, decontaminated and prepared in a clean, controlled environment.

(ii) All articles to be sterilized shall be arranged so all surfaces will be directly exposed to the sterilizing agent for the prescribed time and temperature.

(F) Packaging. All wrapped articles to be sterilized shall be packaged in materials recommended for the specific type of sterilizer and material to be sterilized.

(G) External chemical indicators.

(i) External chemical indicators, also known as sterilization process indicators, shall be used on each package to be sterilized, including items being flash sterilized to indicate that items have been exposed to the sterilization process.

(ii) The indicator results shall be interpreted according to manufacturer's written instructions and indicator reaction specifications.

(iii) A log shall be maintained with the load identification, indicator results, and identification of the contents of the load.

(H) Biological indicators. Biological indicators are commercially-available microorganisms (e.g., United States Food and Drug Administration (FDA) approved strips or vials of *Bacillus* species endospores) which can be used to verify the performance of waste treatment equipment and processes (or sterilization equipment and processes).

(i) The efficacy of the sterilizing process shall be monitored with reliable biological indicators appropriate for the type of sterilizer used.

(ii) Biological indicators shall be included in at least one run each week of use for steam sterilizers, at least one run each day of use for low-temperature hydrogen peroxide gas sterilizers, and every load for ethylene oxide (EO) sterilizers.

(iii) Biological indicators shall be included in every load that contains implantable objects.

(iv) A log shall be maintained with the load identification, biological indicator results, and identification of the contents of the load.

(v) If a test is positive, the sterilizer shall immediately be taken out of service.

(I) Implantable items shall be recalled and reprocessed if a biological indicator test (spore test) is positive.

(II) All available items shall be recalled and re-processed if a sterilizer malfunction is found and a list of those items not retrieved in the recall shall be submitted to infection control.

(III) A malfunctioning sterilizer shall not be put back into use until it has been serviced and successfully tested according to the manufacturer's recommendations.

(I) Sterilizers.

(i) Steam sterilizers (saturated steam under pressure) shall be utilized for sterilization of heat and moisture stable items. Steam sterilizers shall be used according to manufacturer's written instructions.

(ii) EO sterilizers shall be used for processing heat and moisture sensitive items. EO sterilizers and aerators shall be used and vented according to the manufacturer's written instructions.

(iii) Flash sterilizers shall be used for emergency sterilization of clean, unwrapped instruments and porous items only.

(J) Disinfection.

(i) Written policies, approved by the infection control committee, shall be adopted, implemented and enforced for the use of chemical disinfectants.

(ii) The manufacturer's written instructions for the use of disinfectants shall be followed.

(iii) An expiration date, determined according to manufacturer's written recommendations, shall be marked on the container of disinfection solution currently in use.

(iv) Disinfectant solutions shall be kept covered and used in well-ventilated areas.

(v) Chemical germicides that are registered with the United States Environmental Protection Agency as "sterilants" may be used either for sterilization or high-level disinfection.

(vi) All staff personnel using chemical disinfectants shall have received training on their use.

(K) Performance records.

(i) Performance records for all sterilizers shall be maintained for each cycle. These records shall be retained and available for review for a minimum of five years.

(ii) Each sterilizer shall be monitored continuously during operation for pressure, temperature, and time at desired temperature and pressure. A record shall be maintained and shall include:

- (I) the sterilizer identification;
- (II) sterilization date;
- (III) cycle number;
- (IV) contents of each load;
- (V) duration and temperature of exposure phase (if not provided on sterilizer recording charts);
- (VI) identification of operator(s);
- (VII) results of biological tests and dates performed;
- (VIII) time-temperature recording charts from each sterilizer;
- (IX) gas concentration and relative humidity (if applicable); and

(X) any other test results.

(L) Storage of sterilized items.

(i) Sterilized items shall be transported so as to maintain cleanliness and sterility and to prevent physical damage.

(ii) Sterilized items shall be stored in well-ventilated, limited access areas with controlled temperature and humidity.

(iii) The hospital shall adopt, implement and enforce a policy which describes the mechanism used to determine the shelf life of sterilized packages.

(M) Preventive maintenance. Preventive maintenance of all sterilizers shall be performed according to individual adopted, implemented and enforced policy on a scheduled basis by qualified personnel, using the sterilizer manufacturer's service manual as a reference. A preventive maintenance record shall be maintained for each sterilizer. These records shall be retained at least two years and shall be available for review.

(w) Surgical services. If a hospital provides surgical services, the services shall be well-organized and provided in accordance with acceptable standards of practice. If outpatient surgical services are offered, the services shall be consistent in quality with inpatient care in accordance with the complexity of services offered. A special hospital may not offer surgical services.

(1) Organization and staffing. The organization of the surgical services shall be appropriate for the scope of the services offered.

(A) The operating rooms shall be supervised by an experienced RN or physician.

(B) Licensed vocational nurses (LVNs) and surgical technologists (operating room technicians) may serve as scrub nurses or technologists under the supervision of an RN.

(C) Circulating duties in the operating room must be performed by qualified RNs. In accordance with approved medical staff policies and procedures, LVNs and surgical technologists may assist in circulatory duties under the direct supervision of a qualified RN circulator.

(D) Surgical privileges shall be delineated for all physicians, podiatrists, and dentists performing surgery in accordance with the competencies of each. The surgical services shall maintain a roster specifying the surgical privileges of each.

(E) If the facility employs surgical technologists, the facility shall adopt, implement, and enforce policies and procedures to comply with Health and Safety Code, Chapter 259 (relating to Surgical Technologists at Health Care Facilities).

(2) Delivery of service. Surgical services shall be consistent with needs and resources. Written policies governing surgical care which are designed to ensure the achievement and maintenance of high standards of medical practice and patient care shall be adopted, implemented and enforced.

(A) There shall be a complete medical history and physical examination, as required under subsection (k)(3)(F) of this section, in the medical record of every patient prior to surgery, except in emergencies. If this has been dictated, but not yet recorded in the patient's medical record, there shall be a statement to that effect and an admission note in the record by the individual who admitted the patient.

(B) A properly executed informed consent form for the operation shall be in the patient's medical record before surgery, except in emergencies.

(C) The following equipment shall be available in the operating room suites:

- (i) communication system;
- (ii) cardiac monitor;
- (iii) resuscitator;
- (iv) defibrillator;
- (v) aspirator; and
- (vi) tracheotomy set.

(D) There shall be adequate provisions for immediate postoperative care.

(E) The operating room register shall be complete and up-to-date. The register shall contain, but not be limited to, the following:

- (i) patient's name and hospital identification number;
- (ii) date of operation;
- (iii) operation performed;
- (iv) operating surgeon and assistant(s);
- (v) type of anesthesia used and name of person administering it;
- (vi) time operation began and ended;
- (vii) time anesthesia began and ended;
- (viii) disposition of specimens;
- (ix) names of scrub and circulating personnel;
- (x) unusual occurrences; and
- (xi) disposition of the patient.

(F) An operative report describing techniques, findings, and tissue removed or altered shall be written or dictated immediately following surgery and signed by the surgeon.

(x) Therapy services. If the hospital provides physical therapy, occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to ensure the health and safety of patients.

(1) Organization and staffing. The organization of the services shall be appropriate to the scope of the services offered.

(A) The director of the services shall have the necessary knowledge, experience, and capabilities to properly supervise and administer the services.

(B) Physical therapy, occupational therapy, speech therapy, or audiology services, if provided, shall be provided by staff who meet the qualifications specified by the medical staff, consistent with state law.

(2) Delivery of services. Services shall be furnished in accordance with a written plan of treatment. Services to be provided shall be consistent with applicable state laws and regulations, and in accordance with orders of the physician, podiatrist, dentist or other licensed practitioner who is authorized by the medical staff to order the services. Therapy orders shall be incorporated in the patient's medical record.

(y) Waste and waste disposal.

(1) Special waste and liquid/sewage waste management.

(A) The hospital shall comply with the requirements set forth by the department in §§1.131 - 1.137 of this title (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities) and the TCEQ requirements in 30 TAC Chapter 326, Medical Waste Management, §326.17, §326.19, §326.21, and §326.23 (relating to Packaging, Labeling and Shipping Requirements) and §326.31 (relating to Exempt Medical Waste Operations).

(B) All sewage and liquid wastes shall be disposed of in a municipal sewerage system or a septic tank system permitted by the TCEQ in accordance with 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

(2) Waste receptacles.

(A) Waste receptacles shall be conveniently available in all toilet rooms, patient areas, staff work areas, and waiting rooms. Receptacles shall be routinely emptied of their contents at a central location(s) into closed containers.

(B) Waste receptacles shall be properly cleaned with soap and hot water, followed by treatment of inside surfaces of the receptacles with a germicidal agent.

(C) All containers for other municipal solid waste shall be leak-resistant, have tight-fitting covers, and be rodent-proof.

(D) Nonreusable containers shall be of suitable strength to minimize animal scavenging or rupture during collection operations.

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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Karen Ray

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Department of State Health Services

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For further information, please call: (512) 834-4591



CHAPTER 135. AMBULATORY SURGICAL CENTERS

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §135.15

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §135.15, concerning Facility Staffing and Training. The amendment is adopted without changes to the proposed text as published in the September 13, 2019 issue of the *Texas Register* (44 TexReg 4944), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of this amendment is to update the requirements for establishing a nursing peer review committee. The amendment to §135.15 is necessary to comply with House Bill (H.B.) 3296, 85th Legislature, Regular Session, 2017, which amended the

Texas Occupations Code, Chapter 303, related to nursing peer review committees.

COMMENTS

The 31-day comment period ended on October 14, 2019.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the Texas Occupations Code, Chapter 303.

The amendment implements Texas Government Code §531.0055 and Texas Occupations Code, Chapter 303.

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 451. PEER ASSISTANCE

25 TAC §§451.101 - 451.112

The Texas Health and Human Services Commission (HHSC) adopts the repeal of Texas Administrative Code (TAC), Title 25, Part 1, Chapter 451, Peer Assistance, in its entirety, including §451.101, concerning Authority; §451.102, concerning Program Purpose; §451.103, concerning Applicability; §451.104, concerning Relationship to Licensing/Disciplinary Authority; §451.105, concerning Program Requirements; §451.106, concerning Definitions; §451.107, concerning Organization; §451.108, concerning Staffing; §451.109, concerning Program Description; §451.110, concerning Policies and Procedures; §451.111, concerning Referrals to Assessment/Treatment Resources; and §451.112, concerning Certification. The repeal was proposed in the October 18, 2019, issue of the *Texas Register* (44 TexReg 5998). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose is to repeal 40 TAC Chapter 451, Peer Assistance, in its entirety. New rules in 26 TAC Chapter 8, Peer Assistance for Impaired Professionals, are adopted elsewhere in this issue of the *Texas Register* and are substantially similar to the rules being repealed.

COMMENTS

The 31-day comment period ended November 18, 2019. During this period, HHSC did not receive any comments regarding the proposed repeals.

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies.

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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Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 487-3419



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 8. PEER ASSISTANCE PROGRAMS FOR IMPAIRED PROFESSIONALS

26 TAC §§8.101, 8.103, 8.105, 8.107, 8.109, 8.111, 8.113, 8.115, 8.117, 8.119, 8.121, 8.123, 8.125

The Texas Health and Human Services Commission (HHSC) adopts new Chapter 8, concerning Peer Assistance Programs for Impaired Professionals. Section 8.105 is adopted with changes to the proposed text as published in the October 18, 2019, issue of the *Texas Register* (44 TexReg 5999); therefore, the rule will be republished. Sections 8.101, 8.103, 8.107, 8.109, 8.111, 8.113, 8.115, 8.117, 8.119, 8.121, 8.123, and 8.125 are adopted without changes to the proposed text as published in the October 18, 2019, issue of the *Texas Register* (44 TexReg 5999); therefore, the rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new rules move the Department of State Health Services (DSHS) rules in Texas Administrative Code (TAC) Title 25, Chapter 451 to 26 TAC Chapter 8 as part of consolidating all HHSC rules in TAC Title 26. The new rules are reorganized and updated, but do not make changes from the language currently in 25 TAC Chapter 451 that would result in new or increased requirements for a peer assistance program for impaired professionals or for any associated state licensing authority. The repeal of 25 TAC Chapter 451, Peer Assistance, appears elsewhere in this issue of the *Texas Register*.

COMMENTS

The 31-day comment period ended November 18, 2019. During this period, HHSC received comments from the Texas Nurses Association. A summary of the comments and HHSC's responses is below.

Comment: The commenter suggested changing §8.105(7), the definition of "mental health professional" so that it includes a person with either a master's degree or doctorate in nursing.

Response: HHSC agrees and made a revision to the rule to reflect that a mental health professional includes a "nurse, with at least a master's degree in nursing and national certification in substance use or psychiatric nursing."

Comment: The commenter suggested changing §8.105(9) to reference "nurse" rather than "licensed vocational nurse."

Response: HHSC declines to make the suggested change, as the definition is extracted directly from Texas Health and Safety Code §467.001(5).

Comment: The commenter suggested changing §8.121(c) so that a peer assistance program notifies the appropriate licensing or disciplinary authority if a professional fails to participate in the program, rather than notifying the person who reported the professional.

Response: HHSC declines to make the suggested change, as the requirement mirrors Texas Health and Safety Code §467.005(b).

STATUTORY AUTHORITY

The new sections are adopted under Texas Health and Safety Code Chapter 467, which requires HHSC to adopt minimum criteria for peer assistance programs for impaired professionals.

§8.105. Definitions.

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

(1) Approved peer assistance program--A program designed to help an impaired professional which is:

(A) established or approved by a licensing or disciplinary authority;

(B) meets the criteria established by HHSC in this chapter; and

(C) meets any additional criteria established by the licensing or disciplinary authority.

(2) HHSC--The Texas Health and Human Services Commission.

(3) Impaired professional--An individual whose ability to perform professional services is impaired by a mental health or substance use condition.

(4) Impaired student--A student whose ability to perform the services of the profession for which the student is preparing for licensure would be, or would reasonably be expected to be, impaired by a mental health or substance use condition.

(5) Licensing or disciplinary authority--A state agency or board that licenses or has disciplinary authority over professionals.

(6) Mental health condition--A condition (excluding intellectual or developmental disability or a substance use condition) that substantially impairs an individual's:

(A) thought, perception of reality, emotional process, or judgment;

(B) behavior; or

(C) ability to participate in daily routines.

(7) Mental health professional--An individual licensed by the state as a:

(A) licensed chemical dependency counselor;

(B) licensed clinical social worker;

(C) licensed marriage and family therapist;

(D) licensed professional counselor;

(E) psychologist; or

(F) nurse, with at least a master's degree in nursing and national certification in substance use or psychiatric nursing.

(8) Peer assistance program--Identifies, assists, and monitors individuals experiencing mental health or substance use conditions that are, or are likely to be, job-impairing, so that the individuals may return to safe practice. Peer assistance programs offer support and assistance and have a rehabilitative emphasis rather than a disciplinary emphasis.

(9) Professional--An individual who may incorporate under The Texas Professional Corporation Law as described by Section 1.008(m), Business Organizations Code, or who is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

(10) Professional association--A national or statewide association of professionals, including any committee of a professional association and any nonprofit organization controlled by or operated in support of a professional association.

(11) Staff--All persons responsible for implementing a peer assistance program, whether employed, under contract, paid, or volunteer.

(12) Student--An individual enrolled in an educational program or course of study leading to initial licensure as a professional as such program or course of study is defined by the appropriate licensing or disciplinary authority.

(13) Substance use condition--A recurrent use of alcohol or drugs that causes clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.

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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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING
PROCLAMATION
DIVISION 1. GENERAL PROVISIONS

31 TAC §57.971, §57.973

The Texas Parks and Wildlife Commission, in a duly noticed meeting on November 7, 2019, adopted amendments to §57.971, concerning Definitions, and §57.973, concerning Devices, Means, and Methods, with changes to the proposed text as published in the September 27, 2019, issue of the *Texas Register*(44 TexReg 5599). These rules will be republished.

The change to §57.971, paragraph 23 replaces the phrase "name, address, and customer number" with "name and address, or customer number" to reflect that a person deploying a gear tag may indicate either that person's name and address or the person's customer number (i.e., license number) on the gear tag.

The change to §57.973 establishes a six-day period of validity for properly executed gear tags on juglines, minnow traps, perch traps, throwlines, and trotlines. The current rule allows these gears to be deployed for up to 10 days before the gear tags are required to be replaced. As proposed, the time period would have been four days. During deliberations, the commission decided to adopt a six-day period and assess its effectiveness. The change also corrects an inadvertent transposition of terms in subsection (f), which currently reads, in part, "...as provided by the Parks and Wildlife Commission and regulations adopted by the Parks and Wildlife Code." The statement should read "...as provided by the Parks and Wildlife Code and regulations adopted by the Parks and Wildlife Commission."

The amendments as adopted alter definitions and gear tag requirements for jug lines, minnow traps, perch traps, throwlines, and trotlines to facilitate the removal of abandoned fishing gear from public waters and to reduce the waste of fish and wildlife resources.

The amendment to §57.971 alters the definitions for juglines, minnow traps, perch traps, throwlines, and trotlines by stipulating that each type of gear must have the required floats and tags attached in order to be valid as lawful gear. The changes are necessary in order to distinguish bona fide fishing gear from abandoned fishing gear and litter.

The amendment to §57.973, concerning Devices, Means, and Methods, reduces the period of validity for a gear tag from 10 days to six days. Under current rules, gear tags are required to be affixed to most fishing devices that are typically left unattended, such as trotlines. The department has determined that because such devices continue to kill fish and represent a danger to birds and mammals when they are abandoned, it is necessary to require a gear tag to be employed when they are used. Under Parks and Wildlife Code, §12.1105, the department is authorized to seize a device that is in or on water in violation of a regulation of the commission. By defining juglines, minnow traps, perch traps, throwlines, and trotlines as devices that must be affixed with a valid gear tag and float in order to be lawfully used, the department will be able to seize and remove unmarked devices, thereby preventing abandoned devices from continuing to negatively impact fish and wildlife populations. Removal of such devices will also assist the department in determining ac-

tual levels of fishing effort for various devices and will have the additional benefit of reducing threats to human health and safety.

By establishing a period of validity for gear tags of six days, the department intends to encourage a proactive approach to the use of passive fishing gears. Scientific investigations conducted by the department conclusively show that the majority of mortalities as a result of "ghost fishing" (the continuing effect of unattended passive gears) occur after four days.

The department received 41 comments opposing adoption of the rules as proposed. Of the 41 comments, 40 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Nine commenters opposed adoption and stated that requiring gears to be accompanied by visible markings would just make it easier for unscrupulous persons to steal fish and gear from law-abiding anglers. The department disagrees with the comments and responds that although there are persons who make the conscious decision to violate the law, marked fishing gear is also easier to identify and observe, and makes the gear more difficult to be disturbed or possessed by malefactors. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that requiring anglers to record their name, address, and customer number is redundant. The department agrees and responds that the intent of the rule was to require one or the other, which has been remedied.

Three commenters opposed adoption and stated that the rules are unnecessary because people will abandon gear no matter what the rules require. The department disagrees with the comments and responds that the intent of the rules is to reduce negative impact to fisheries from abandoned gear and allow for abandoned gear to be seized as litter. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the rules should stay as is but the department should increase enforcement activity. The department disagrees with the comment and responds that enforcement personnel diligently enforce the law and will continue to do so and that equipping gear with floats will increase the efficiency of enforcement efforts. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that instead of regulatory actions, there should be community action, such as lake cleanups. The department disagrees with the comment and responds that although community action is certainly laudable, volunteer assistance cannot be relied upon to be applied in the numerous areas statewide where these activities occur, and volunteers are constrained by statutory authority that does not allow them to remove illegal fishing gears. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the rules are evidence of department bias against means and methods other than rod and reel. The department disagrees with the comments and responds that the department does not favor any particular method of legal take over any other method of legal take and that passive gear by its very nature requires a regulatory approach that is different from gears such as pole and line that are continuously tended while in use. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that anglers should be allowed to inscribe noodles and jugs with identifying

information instead of having to provide a separate gear tag. The department agrees with the comment and responds that as long as the required information is somewhere on the gear, the department regards the device as being properly marked. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules will make it harder to go fishing. The department disagrees with the comment and responds that gear tag requirements will not impose any significant burden on persons who want to go fishing. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules make compliance impossible for elderly persons who cannot get out as often as younger people. The department disagrees with the comment and responds that equipping gears with floats and replacing gear tags once every six days instead of once every ten days does not appear to be a significant barrier to participation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that gear-tag period of validity should be 48 hours. The department disagrees with the comment and responds that the commission after deliberation determined that a six-day period, at least for an initial period, was worth implementing in order to assess effectiveness. No changes were made as a result of the comment.

One commenter opposed adoption and stated that gear-tag period of validity should be 24 hours. The department disagrees with the comment and responds that the commission after deliberation determined that a six-day period, at least for an initial period, was worth implementing in order to assess effectiveness. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should limit the number of passive devices that can be deployed on any given water body because they constitute a boating safety hazard. The department disagrees with the comment and responds that the logistical complications associated with administering and enforcing a quota system for passive gears on public water bodies would be burdensome and expensive. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a float should be required for each end of a trotline. The department agrees with the comment and responds that the rules require each end of a trotline to be equipped with a float. No changes were made as a result of the comment.

One commenter opposed adoption and stated that a float should be required for limblines. The department agrees with the comment and responds that the rules require a float to be attached to a limblime, which is actually a type of throwline. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would make it difficult to fish legally. The department disagrees with the comment and responds that requiring certain devices to be equipped with floats and reducing the period of validity of gear tags will not result in any significant barrier to participation. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would create hardships for anglers and campers who like to fish for a week at a time. The department disagrees with the comment and responds that requiring certain devices to be equipped with floats and reducing the period of validity of gear tags will not result in any significant barrier to participation,

irrespective of the amount of time devoted to the regulated activity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules would encourage people to violate. The department disagrees with the comment and responds that a person who consciously decides to violate the law is a violator who runs the risk of being detected, cited, convicted, and punished. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should not promulgate new rules when it does not enforce the current rules. The department disagrees with the comment and responds that enforcement personnel diligently enforce the law and will continue to do so. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the proposed four-day period of validity for gear tags is inconvenient for people who live a long way away from where they fish. The department disagrees with the comment and responds that the rules are not and should not be predicated on the distance an angler must travel to engage in a regulated activity; however, the rule as adopted establishes a six-day period of validity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the dimensions of the gear tag are too large and that stamped metal gear tags should be lawful. The department disagrees with the comment and responds that the rules do not prescribe the physical dimensions of gear tags and that stamped metal gear tags are lawful, provided they bear the required information. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will just result in more trash. The department disagrees with the comment and responds that the rules will allow the department to more quickly identify and remove abandoned gear, thus reducing litter. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should define the term "free-floating." The department disagrees with the comment and responds that the plain and ordinary meaning of the phrase is sufficient to convey what needs to be understood by the term. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the gear tag validity period should be between five and seven days. The department agrees with the comment and has made changes accordingly.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess aquatic animal life in this state; the means, methods, and places in which it is lawful to take, or possess aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the aquatic animal life authorized to be taken or possessed; and the region, county, area, body of water, or portion of a county where aquatic animal life may be taken or possessed.

§57.971. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this subchapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) Annual bag limit--The quantity of a species of a wildlife resource that may be taken from September 1 of one year to August 31 of the following year.

(2) Artificial lure--Any lure (including flies) with hook or hooks attached that is man-made and is used as a bait while fishing.

(3) Bait--Something used to lure any aquatic wildlife resource.

(4) Cast net--A net which can be hand-thrown over an area.

(5) Charter Vessel--A vessel less than 100 gross tons that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a commercial permit is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

(6) Circle hook--A hook originally designed and manufactured so that the point of the hook is turned perpendicularly back toward the shank of the hook to form a generally circular or oval shape.

(7) Coastal waters boundary--All public waters east and south of the following boundary are considered saltwater: Beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of the Aransas River south of Woodsboro, thence eastward along the south shore of the Aransas River to the junction of the Aransas River Road at the Bonnie View boat ramp; thence northward along the Aransas River Road to the junction of F.M. Road 629; thence northward along F.M. Road 629 to the junction of F.M. Road 136; thence eastward along F.M. Road 136 to the junction of F.M. Road 2678; then northward along F.M. Road 2678 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northeastward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence southward along State Highway 36 to the junction of F.M. Road 2004, thence northward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur, thence northward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The waters of Spindletop Bayou inland from the concrete dam at Russels Landing on Spindletop Bayou in Jefferson County; public waters north of the dam on Lake Anahuac in Chambers County; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; Lakeview City

Park Lake, West Guth Park Pond, and Waldron Park Pond in Nueces County; Galveston County Reservoir and Galveston State Park ponds #1-7 in Galveston County; Lake Burke-Crenshaw and Lake Nassau in Harris County; Fort Brown Resaca, Resaca de la Guerra, Resaca de la Palma, Resaca de los Cuates, Resaca de los Fresnos, Resaca Rancho Viejo, and Town Resaca in Cameron County; and Little Chocolate Bayou Park Ponds #1 and #2 in Calhoun County are not considered coastal waters for purposes of this subchapter.

(8) Community fishing lake--All public impoundments 75 acres or smaller located totally within an incorporated city limits or a public park, and all impoundments of any size lying totally within the boundaries of a state park.

(9) Crab--All species within the families *Portunidae* and *Menippidae*.

(10) Crab line--A baited line with no hook attached.

(11) Daily bag limit--The quantity of a species of a wildlife resource that may be lawfully taken in one day.

(12) Day--A 24-hour period of time that begins at midnight and ends at midnight.

(13) Dip net--A mesh bag suspended from a frame attached to a handle.

(14) Final processing--The cleaning of a dead wildlife resource for cooking or storage purposes.

(15) Fish--

(A) Game fish--Alabama bass, blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, longbill spearfish, pickerel, red drum, rainbow trout, sailfish, sauger, sharks, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, tripletail, wahoo, walleye, white bass, white marlin, yellow bass, and hybrids or subspecies of the species listed in this subparagraph.

(B) Non-game fish--All species not listed as game fish, except endangered and threatened fish, which are defined and regulated under separate proclamations.

(16) Fishing--Taking or attempting to take aquatic animal life by any means.

(17) Fish length--That straight-line measurement (while the fish is lying on its side) from the tip of the snout (jaw closed) to the extreme tip of the tail when the tail is squeezed together or rotated to produce the maximum overall length.

(18) Fish species names--The names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "Common and Scientific Names of Fishes from The United States, Canada and Mexico."

(19) Fishing guide--A person who, for compensation, accompanies, assists, or transports a person or persons engaged in fishing in the water of this state.

(20) Fishing guide deck hand--A person in the employ of a fishing guide who assists in operating a boat for compensation to accompany or to transport a person or persons engaged in fishing in the water of this state.

(21) Folding panel trap--A metallic or non-metallic mesh trap, the side panels hinged to fold flat when not in use, and suspended in the water by multiple lines.

(22) Gaff--Any hand-held pole with a hook attached directly to the pole.

(23) Gear tag--A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible, contain the name and address, or customer number, of the person using the device, and, except for saltwater trotlines and crab traps fished under a commercial license, the date the device was set out.

(24) Gig--Any hand-held shaft with single or multiple points.

(25) Handfishing--Fishing by the use of hands only and without any other fishing devices such as gaff, pole hook, trap, stick, or spear.

(26) Headboat--A vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire. A headboat with a commercial vessel permit is considered to be operating as a headboat when it carries a passenger who pays a fee or, in the case of persons aboard fishing for or possessing coastal migratory fish or Gulf reef fish, when there are more than three persons aboard, including operator and crew.

(27) Inside waters--All bays, inlets, outlets, passes, rivers, streams, and other bodies of water landward from the shoreline of the state along the Gulf of Mexico and contiguous to, or connected with, but not a part of, the Gulf of Mexico and within which the tide regularly rises and falls.

(28) Jug line--A fishing line with five or less hooks and a gear tag tied to a free-floating device.

(29) Lawful archery equipment--Longbow, recurved bow, and compound bow.

(30) License year--The period of time for which an annual fishing license is valid.

(31) Natural bait--A whole or cut-up portion of a fish or shellfish or a whole or cut-up portion of plant material in its natural state, provided that none of these may be altered beyond cutting into portions.

(32) Paddle craft--Any non-motorized vessel.

(33) Paddle-craft fishing guide--A person who, for compensation, accompanies, assists, or transports a person or persons by means of a non-motorized vessel engaged in fishing in the coastal waters of this state.

(34) Pole and line--A line with hook, attached to a pole. This gear includes rod and reel.

(35) Possession limit--The maximum number of a wildlife resource that may be lawfully possessed at one time.

(36) Purse seine--A net with flotation on the corkline adequate to support the net in open water without touching bottom, with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

(37) Residence--A permanent structure where a person regularly sleeps and keeps personal belongings such as furniture and clothes, but does not include a temporary abode or dwelling such as a hunting or fishing club, or any club house, cabin, tent, or trailer house or mobile home used as a hunting or fishing camp, or any hotel, motel, or rooming house used on a temporary basis.

(38) Sail line--A type of trotline with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail.

(39) Sand Pump--A self-contained, hand-held, hand-operated suction device used to remove and capture Callinassid ghost shrimp (*Callichirus islagrande*) from their burrows.

(40) Seine--A section of non-metallic mesh webbing, the top edge buoyed upwards by a floatline and the bottom edge weighted.

(41) Spear--Any shaft with single or multiple points, barbed or barbless, which may be propelled by any means, but does not; include arrows.

(42) Spear gun--Any hand-operated device designed and used for propelling a spear, but does not include the crossbow.

(43) Throwline--A fishing line with:

(A) five or less hooks;

(B) one end attached to a permanent fixture;

(C) a float attached at or above the water line; and

(D) a gear tag.

(44) Trap--A rigid device of various designs and dimensions used to entrap aquatic life, including a man-made device such as a box, barrel, or pipe.

(45) Trawl--A bag-shaped net which is dragged along the bottom or through the water to catch aquatic life.

(46) Trotline--A nonmetallic main fishing line with:

(A) more than five hooks;

(B) each end attached to a fixture;

(C) floats attached at or above the water line; and

(D) a gear tag.

(47) Umbrella net--A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.

(48) Wildlife resources--For the purposes of this subchapter, all aquatic animal life.

§57.973. *Devices, Means and Methods.*

(a) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(b) Game and non-game fish may be taken only by pole and line in or on:

(1) community fishing lakes;

(2) sections of rivers lying totally within the boundaries of state parks;

(3) any dock, pier, jetty, or other manmade structure within a state park;

(4) Canyon Lake Project #6 (Lubbock County);

(5) Lake Pflugerville (Travis County);

(6) North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam;

(7) South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam; and

(8) Wheeler Branch (Somervell County).

(c) No person may employ more than two pole-and-line devices at the same time on:

- (1) any dock, pier, jetty, or other manmade structure within a state park;
- (2) community fishing lakes that are not within or part of a state park;
- (3) Canyon Lake Project #6 (Lubbock County);
- (4) North Concho River (Tom Green County) from O. C. Fisher Dam to Bell Street Dam; and
- (5) South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(d) It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subchapter.

(e) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(f) Aquatic life (except threatened and endangered species) not addressed in this subchapter may be taken only by hand or with the devices defined as lawful for taking fish, crabs, oysters, or shrimp in places and at times as provided by the Parks and Wildlife Code and regulations adopted by the Parks and Wildlife Commission.

(g) Device restrictions. Devices legally used for taking fresh or saltwater fish or shrimp may be used to take crab as authorized by this subchapter.

(1) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(A) Only non-game fish may be taken with a cast net.

(B) In salt water, non-game fish may be taken for bait purposes only.

(2) Crab line. It is unlawful to fish a crab line for commercial purposes that is not marked with a floating white buoy not less than six inches in height, six inches in length and six inches in width bearing the commercial crab fisherman's license plate number in letters of a contrasting color at least two inches high attached to the end fixtures.

(3) Crab trap. It is unlawful to:

(A) fish for commercial purposes under authority of a commercial crab fisherman's license with more than 200 crab traps at one time;

(B) fish for commercial purposes under authority of a commercial finfish fisherman's license with more than 20 crab traps at one time;

(C) fish for non-commercial purposes with more than six crab traps at one time;

(D) fish a crab trap in the fresh waters of this state;

(E) fish a crab trap that:

(i) exceeds 18 cubic feet in volume;

(ii) is not equipped with at least two escape vents (minimum 2-3/8 inches inside diameter) in each crab-retaining chamber, and located on the outside trap walls of each chamber; and

(iii) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(I) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390). The trap lid

must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(II) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(III) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-a-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-b-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-c-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand #530), sisal twine (comparable to Lehigh brand #390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed;

(F) fish a crab trap for commercial purposes under authority of a commercial crab fisherman's license:

(i) that is not marked with a floating white buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(ii) that is not marked with a white buoy bearing the commercial crab fisherman's license plate number in letters of a contrasting color at least two inches high attached to the crab trap;

(iii) that is marked with a buoy bearing a commercial crab fisherman's license plate number other than the commercial crab fisherman's license plate number displayed on the crab fishing boat;

(G) fish a crab trap for commercial purposes under authority of a commercial finfish fisherman's license:

(i) that is not marked with a floating white buoy not less than six inches in height, six inches in length, and six inches in width attached to the crab trap;

(ii) that is not marked with a white buoy bearing the letter 'F' and the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to the crab trap;

(iii) that is marked with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(H) fish a crab trap for non-commercial purposes without a floating white buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide center stripe of contrasting color, attached to the crab trap;

(I) fish a crab trap in public salt waters for non-commercial purposes without a valid gear tag. Gear tags must be attached within 6 inches of the buoy and are valid for 10 days after date set out;

(J) fish a crab trap within 200 feet of a marked navigable channel in Aransas County; and in the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine Mile Point, past the town of Rockport to a point at the east end of Talley Island including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula or possess, use or place:

(i) for recreational purposes, more than three crab traps in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County; or

(ii) for commercial purposes, a crab trap in waters north and west of Highway 146 where it crosses the Houston Ship Channel in Harris County;

(K) remove crab traps from the water or remove crabs from crab traps during the period from 30 minutes after sunset to 30 minutes before sunrise;

(L) place a crab trap or portion thereof closer than 100 feet from any other crab trap, except when traps are secured to a pier or dock;

(M) fish a crab trap in public waters that is marked with a buoy made of a plastic bottle(s) of any color or size; or

(N) use or place more than three crab traps in public waters of the San Bernard River north of a line marked by the boat access channel at Bernard Acres.

(4) Dip net.

(A) It is unlawful to use a dip net except:

(i) to aid in the landing of fish caught on other legal devices; and

(ii) to take non-game fish.

(B) In salt water, non-game fish may be taken for bait purposes only.

(5) Folding panel trap.

(A) Only crabs may be taken with a folding panel trap.

(B) It is unlawful to use a folding panel trap with an overall surface area, including panels, exceeding 16 square feet.

(6) Gaff.

(A) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(B) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(7) Gig. Only non-game fish may be taken with a gig.

(8) Handfishing. For use in fresh water only.

(A) Only blue, channel, and flathead catfish may be taken by means of handfishing.

(B) It is unlawful to intentionally place or use a trap in public waters for the purpose of taking catfish by handfishing.

(9) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(A) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 6 days after the date set out, and must include the number of the permit to sell non-game fish taken from fresh water, if applicable;

(B) for commercial purposes that is not marked with an orange free-floating device that is less than six inches in length and three inches in diameter;

(C) for non-commercial purposes that is not marked with a free-floating device of any color other than orange that is less than six inches in length and three inches in diameter; and

(D) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(10) Lawful archery equipment. Only non-game fish may be taken with lawful archery equipment or crossbow.

(11) Minnow trap (fresh water and salt water). It is unlawful to use a minnow trap that is not marked with a floating, visible buoy of any color other than orange that is not less than six inches in height and six inches in width. The buoy must have a gear tag attached. A gear tag is valid for 6 days after the date it is set out.

(A) Only non-game fish may be taken with a minnow trap.

(B) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(12) Perch traps. For use in salt water only.

(A) Perch traps may be used only for taking non-game fish.

(B) It is unlawful to fish a perch trap that:

(i) exceeds 18 cubic feet in volume;

(ii) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(I) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(II) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(III) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-a-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand #390) knotted only at each end and not tied or looped more than once

around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-b-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-c-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand #530), sisal twine (comparable to Lehigh brand #390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed;

(iii) is not marked with a floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 6 days after date set out.

(13) Pole and line.

(A) Game and non-game fish may be taken by pole and line. It is unlawful to use a pole and line to take or attempt to take fish by foul-hooking, snagging, or jerking. A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(B) Game and non-game fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take non-game fish.

(C) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to a point 800 yards downstream of the Canyon Lake dam outlet, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(14) Purse seine.

(A) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore.

(B) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(C) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(15) Sail line. For use in salt water only.

(A) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(B) Line length shall not exceed 1,800 feet from the reel to the sail.

(C) The sail and most shoreward float must be a highly visible orange or red color. All other floats must be yellow.

(D) No float on the line may be more than 200 feet from the sail.

(E) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(F) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(G) There is no hook spacing requirement for sail lines.

(H) No more than one sail line may be used per fisherman.

(I) Sail lines may not be used by the holder of a commercial fishing license.

(J) Sail lines must be attended at all times the line is fishing.

(K) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(16) Sand pump. It is unlawful for any person to use a sand pump:

(A) that is not manually operated; or

(B) for commercial purposes.

(17) Seine.

(A) Only non-game fish may be taken with a seine.

(B) It is unlawful to use a seine:

(i) which is not manually operated;

(ii) with mesh exceeding 1/2-inch square; or

(iii) that exceeds 20 feet in length.

(C) In salt water, non-game fish may be taken by seine for bait purposes only.

(18) Shad trawl. For use in fresh water only.

(A) Only non-game fish may be taken with a shad trawl.

(B) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(C) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(19) Spear. Only non-game fish may be taken with a spear.

(20) Spear gun. Only non-game fish may be taken with spear gun.

(21) Throwline. For use in fresh water only.

(A) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(B) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County.

(C) It is unlawful to use a throwline:

(i) that is not equipped with a gear tag. A gear tag is valid for 6 days after the date it is set out;

(ii) for commercial purposes that is not marked by an orange float that is less than six inches in length and three inches in diameter; and

(iii) for non-commercial purposes that is not marked with a float of any color other than orange that is less than six inches in length and three inches in diameter.

(22) Trotline.

(A) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(B) It is unlawful to use a trotline:

(i) with a mainline length exceeding 600 feet;

(ii) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 6 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(iii) with hook interval less than three horizontal feet;

(iv) with metallic stakes; or

(v) with the main fishing line, attached hooks, and stagings above the water's surface.

(C) In fresh water, it is unlawful to use a trotline:

(i) with more than 50 hooks;

(ii) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Lakes Coffee Mill and Davy Crockett in Fannin County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Boerne City Park Lake in Kendall County, Lake Naconiche in Nacogdoches County, and Tankersley Reservoir in Titus County;

(iii) for commercial purposes that is not marked by an orange float that is less than six inches in length and three inches in diameter, and attached to end fixtures; and

(iv) for non-commercial purposes that is not marked with a float of any color other than orange that is less than six inches in length and three inches in diameter attached to each end fixture.

(D) In salt water:

(i) it is unlawful to use a trotline:

(I) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(II) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;

(III) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(IV) baited with other than natural bait, except sail lines;

(V) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than

five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(VI) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(ii) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1:00 p.m. on Friday through 1:00 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy.

(iii) It is unlawful to fish for commercial purposes with:

(I) more than 20 trotlines at one time;

(II) any trotline that is not marked with yellow flagging attached to stakes or with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to end fixtures;

(III) any trotline that is not marked with yellow flagging attached to stakes or with a yellow buoy bearing the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to end fixtures;

(IV) any trotline that is marked with yellow flagging or with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat.

(iv) It is unlawful to fish for non-commercial purposes with:

(I) more than 1 trotline at any time; or

(II) any trotline that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide stripe of contrasting color, attached to end fixtures.

(23) Umbrella net.

(A) Only non-game fish may be taken with an umbrella net.

(B) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

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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Robert D. Sweeney, Jr.

General Counsel

Texas Parks and Wildlife Department

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



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER JJ. CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1201

The Comptroller of Public Accounts adopts amendments to §3.1201, concerning fee for outdoor advertising of cigarettes or tobacco products, without changes to the proposed text as published in the December 6, 2019, issue of the *Texas Register* (44 TexReg 7492). The rule will not be republished. The comptroller amends the rule to replace statutory references with definitions, to incorporate statutory changes made by House Bill 3475, 86th Legislature, 2019, and to remove outdated requirements and expired effective date language. The comptroller also amends the rule to include a title for penalties and address when a penalty is applicable for failure to remit tax when a report is due.

The comptroller amends subsection (a)(1) and (5) to replace statutory citations with the actual definition of cigarettes and the revised definition of tobacco products from House Bill 3475. See Tax Code, §154.001 and §155.001.

The comptroller amends subsection (c) to rename the title to reflect "Due date and reporting period". The comptroller removes paragraph (2) regarding outdated reporting requirements for cigarettes and tobacco products. Additionally, the comptroller restructures subsection (c) to remove the graphic and incorporate the graphic's language relating to reporting requirements and the due dates in paragraphs (1) through (4).

The comptroller amends subsection (g)(1) to add the title "Penalty" to address a penalty is applicable when a purchaser fails to timely remit tax when due. Paragraph (2) removes existing language referencing the Tax Code and amends the language to include interest provisions related to delinquent reports.

The comptroller amends subsection (h) to remove the word "the" before all statutory references throughout this subsection.

The comptroller deletes subsection (j) to remove outdated language regarding the effective date of the fee imposed on cigarette and tobacco product outdoor advertising, which is no longer necessary to administer current law.

No comments were received regarding adoption of the amendment.

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

The section implements Health and Safety Code, §161.123 (Advertising Fee).

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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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) adopts the following new section to Chapter 815, relating to Unemployment Insurance, without changes, as published in the October 11, 2019, issue of the *Texas Register* (44 TexReg 5892): Subchapter C. Tax Provisions, §815.117. This rule will not be republished.

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 recognized that in order to properly implement SB 2296, the Commission needed to define certain terms and set parameters for eligible related corporations which have established an allowable Common Paymaster arrangement. These rules address definitions for Common Paymaster, what constitute related corporations, and concurrent employment. Also required were 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 adopted rules, a group of related corporations meeting all requirements may only designate a single Common Paymaster.

These rule amendments are adopted 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 WITH COMMENTS AND RESPONSES

(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 adopts the following amendment to 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 corporations 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.

Summary of comments and agency responses.

The public comment period on the proposal began October 11, 2019, and ended November 12, 2019. TWC received one timely comment during this time.

Keith Ribnick, United States Department of Labor:

--Comment: We have reviewed and consulted with the Division of Legislation in the Office of Unemployment Insurance regarding the proposed Texas administrative rule related to the definition of "Common Paymaster" (attached). We did not identify any conformity issues with the proposed rule. If modifications are made to the proposed rule or if we can provide additional assistance, please let us know.

--Response: TWC appreciates the review and findings from the U.S. Department of Labor in accordance with its responsibility under federal law. No changes are necessary in response to this comment.

The rule is adopted under Texas Labor Code §201.011(11) and §301.0015, which provide 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 adopted rule affects Texas Labor Code, Title 4, Subtitle A, Texas Unemployment Compensation Act.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 7, 2020.

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Jason Vaden

Director, Workforce Program Policy

Texas Workforce Commission

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For further information, please call: (512) 689-9855



TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Water Development Board

Rule Transfer

The rules promulgated by the Texas Water Development Board under Title 31, Chapter 382 and Chapter 384 are being administratively transferred to Title 31, Chapter 365 and Chapter 366. Due to an oversight by the *Texas Register*, these rules were filed under chapter designations that are not included in Title 31, Part 10. Chapter 382 and Chapter 384 are assigned to Title 31, Part 11. Chapter 382 and Chapter 384 are being moved to correct the oversight and prevent future overlap of rules

across Part 10 and Part 11. Note: there are not rules currently in effect for Chapter 382.

The rules will be transferred in the Texas Administrative Code effective February 15, 2020.

The following tables outline the rule transfers.

Figure: 31 TAC Chapter 382

Current Rules	Move to
Title 31. Natural Resources and Conservation	Title 31. Natural Resources and Conservation
Part 10. Texas Water Development Board	Part 10. Texas Water Development Board
Chapter 382. Water Infrastructure Fund	Chapter 366. Water Infrastructure Fund
Subchapter A. Introductory Provisions	Subchapter A. Introductory Provisions
§382.1. Scope of Chapter.	§366.1. Scope of Chapter.
§382.2. Definitions of Terms.	§366.2. Definitions of Terms.
§382.3. Use of Funds.	§366.3. Use of Funds.
§382.4. Availability of Funds.	§366.4. Availability of Funds.
§382.5. Interest Rates for Loans.	§366.5. Interest Rates for Loans.
§382.6. Investment of Funds.	§366.6. Investment of Funds.
Subchapter B. Application Procedures	Subchapter B. Application Procedures
§382.21. Preapplication Meeting.	§366.21. Preapplication Meeting.
§382.22. Application for Assistance.	§366.22. Application for Assistance.
§382.23. Pre-design Funding Option.	§366.23. Pre-design Funding Option.
§382.24. Board Consideration of Application.	§366.24. Board Consideration of Application.
§382.25. Findings Required.	§366.25. Findings Required.
§382.26. Action of the Board on Application.	§366.26. Action of the Board on Application.
Subchapter C. Closing and Release of Funds	Subchapter C. Closing and Release of Funds
§382.41. Loan Closing.	§366.41. Loan Closing
§382.42. Release of Funds.	§366.42. Release of Funds.
§382.43. Engineering Design Approvals.	§366.43. Engineering Design Approvals.

Figure: 31 TAC Chapter 384

Current Rules	Move to
Title 31. Natural Resources and Conservation	Title 31. Natural Resources and Conservation
Part 10. Texas Water Development Board	Part 10. Texas Water Development Board
Chapter 384. Rural Water Assistance Fund	Chapter 365. Rural Water Assistance Fund
Subchapter A. Introductory Provisions	Subchapter A. Introductory Provisions
§384.1. Scope of Chapter.	§365.1. Scope of Chapter.
§384.2. Definitions of Terms.	§365.2. Definitions of Terms.
§384.3. Use of Funds.	§365.3. Use of Funds.
§384.5. Interest Rates for Loans.	§365.5. Interest Rates for Loans.
§384.6. Loans in Excess of 20 Years.	§365.6. Loans in Excess of 20 Years.
§384.7. Investment of Funds.	§365.7. Investment of Funds.
Subchapter B. Application Procedures	Subchapter B. Application Procedures
§384.21. Preapplication Meeting.	§365.21. Preapplication Meeting.
§384.22. Application for Assistance.	§365.22. Application for Assistance.
§384.23. Pre-design Funding Option.	§365.23. Pre-design Funding Option.
§384.24. Board Consideration of Application.	§365.24. Board Consideration of Application.
§384.25. Findings Required.	§365.25. Findings Required.
§384.26. Action of the Board on Application.	§365.26. Action of the Board on Application.
Subchapter C. Closing and Release of Funds	Subchapter C. Closing and Release of Funds
§384.41. Loan Closing.	§365.41. Loan Closing
§384.42. Deed of Trust and Other Required Documentation.	§365.42. Deed of Trust and Other Required Documentation.
§384.43. Release of Funds.	§365.43. Release of Funds.
§384.44. Loan Agreements for Nonprofit Water Supply or Sewer Service Corporations.	§365.44. Loan Agreements for Nonprofit Water Supply or Sewer Service Corporations.
§384.45. Engineering Design Approvals.	§365.45. Engineering Design Approvals.

TRD-202000115



REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Transportation

Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part 1, Chapter 1, Management; Chapter 5, Finance; Chapter 11, Design; Chapter 15, Financing and Construction of Transportation Projects; Chapter 21, Right of Way; and Chapter 27, Toll Projects.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. Comments regarding this rule review may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the

subject line "Rule Review." The deadline for receipt of comments is 5:00 p.m. on February 24, 2020.

In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

TRD-202000074

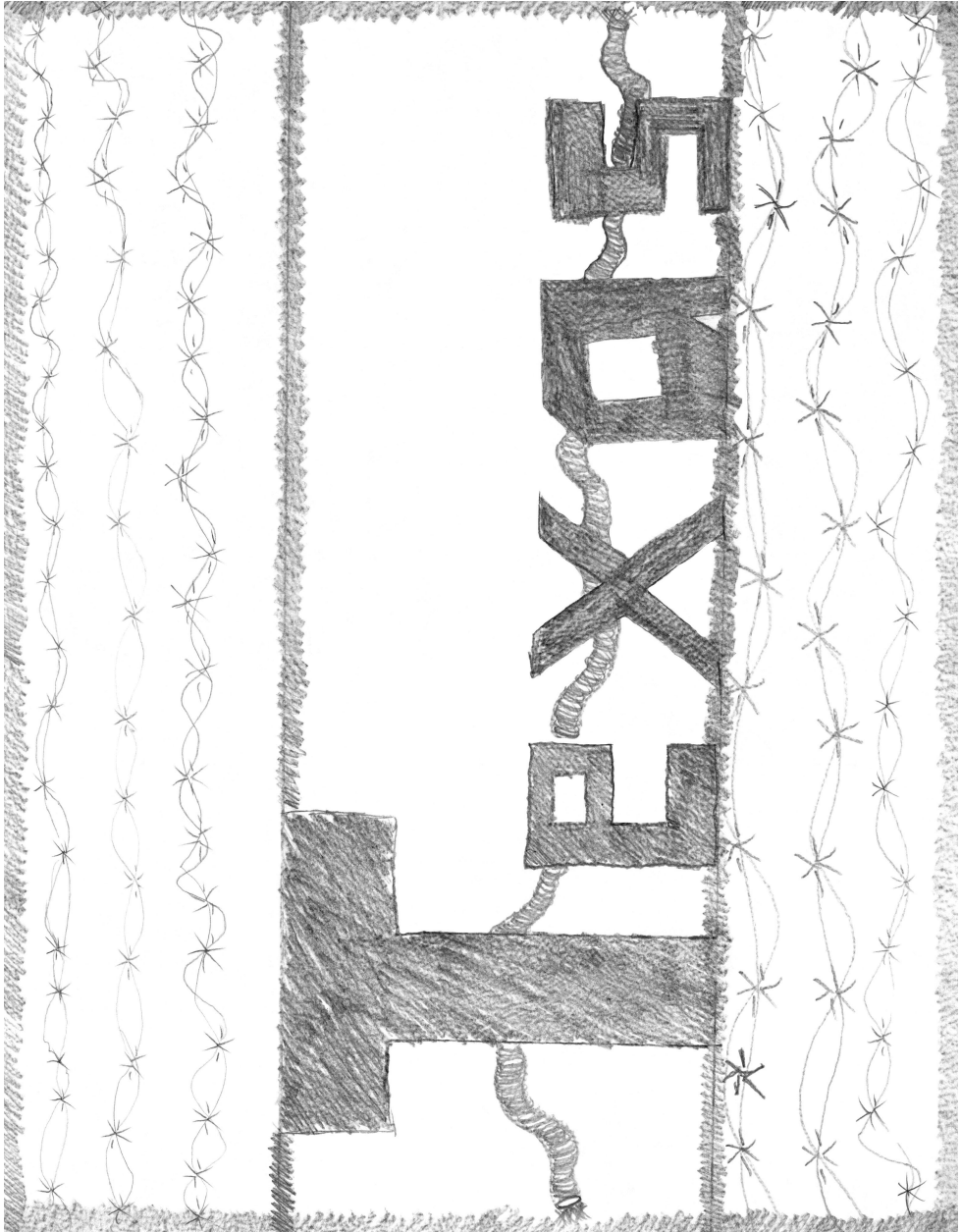
Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: January 9, 2020





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: 22 TAC §575.25

Pursuant to Occupations Code §801.407, the State Office of Administrative Hearings (SOAH) shall use this Schedule of Sanctions in determining any sanction to be imposed as the result of a contested case hearing.

Upon the finding of a violation, the finder of fact shall classify the severity of the violation using the classification criteria provided. The finder of fact shall then consider the aggravating and mitigating factors to determine the appropriate sanction within the range provided. The sanction shall not exceed the maximum sanction nor fall below the minimum sanction for the violation class. It is not mandatory that the finder of fact utilize all the sanctions in the appropriate range. The finder of fact may choose one or more sanctions from within the appropriate range.

In cases where the violation found is not specifically enumerated in the Schedule of Sanctions, the Default Schedule shall be used to classify the severity of the violation and to establish maximum and minimum sanctions.

The finder of fact shall consider the following aggravating and mitigating factors in assessing the appropriate sanction for any violation. The finder of fact shall also consider any specific aggravating or mitigating factors identified for each enumerated violation.

Aggravating factors:

- A history of previous violations
- Any hazard or potential hazard created to the health, safety, or economic welfare of the public
- Any economic harm or risk of harm to the client or the public, including economic harm to property or the environment
- Any misrepresentations or untruthfulness regarding the violation

Mitigating factors:

- Any efforts to correct the violation, harm, or risk of harm
- Any restitution made to the client
- Whether the licensee is new to the practice of veterinary medicine or equine dentistry
- The extent to which facility policies and conditions beyond licensee's control contributed to the violation

In cases where more than one provision of the Veterinary Licensing Act Chapter 801, Occupations Code, or "VLA") or the Board's Rules has been violated, the most severe minimum sanction recommended by the Schedule of Sanctions for any one of the individual violations shall be the minimum sanction considered.

In cases where an administrative penalty is indicated for a licensed veterinary technician or an equine dental provider, the finder of fact may reduce the administrative penalty by half.

Notwithstanding the recommended maximum and minimum sanctions, the Board may order a Respondent at an informal proceeding to issue a refund pursuant to Section 801.408(e), Occupations Code.

Fraud or Dishonesty on Application or Exam – VLA §801.402(1), §801.402(2)		
Classification Criteria	Minimum Sanction	Maximum Sanction
Class A: <ul style="list-style-type: none"> • Application falsification or omission which would have resulted in denial of licensure • Fraud in exam process 	<ul style="list-style-type: none"> • Revocation or denial of licensure 	<ul style="list-style-type: none"> • Revocation or denial of licensure
Class B: <ul style="list-style-type: none"> • Application falsification or omission which could have resulted in licensure with stipulations 	<ul style="list-style-type: none"> • Informal reprimand • \$500 administrative penalty • Jurisprudence examination 	<ul style="list-style-type: none"> • Five year suspension, probated or enforced • Statutory maximum administrative penalty • Jurisprudence Examination
Class C: <ul style="list-style-type: none"> • Application falsification or omission which would not have prevented licensure without stipulations 	<ul style="list-style-type: none"> • Jurisprudence examination 	<ul style="list-style-type: none"> • Formal reprimand • \$1,000 administrative penalty • Jurisprudence examination

Continuing Education – RULES §573.64, §573.65, and §573.66		
Classification Criteria	Minimum Sanction	Maximum Sanction
Class A: <ul style="list-style-type: none"> • Three or more continuing education violations within ten years 	<ul style="list-style-type: none"> • Probated suspension until deficient hours are completed and documentation provided to the Board • Formal reprimand • \$100 administrative penalty for each hour deficient plus \$250 for each previous continuing education disciplinary action 	<ul style="list-style-type: none"> • Enforced suspension until deficient hours are completed and documentation provided to the Board • Formal Reprimand • \$100 administrative penalty for each hour deficient plus \$250 for each previous continuing education disciplinary action
Class B : <ul style="list-style-type: none"> • Second continuing education violation within ten years • Licensee falsely attested on license renewal that required continuing education hours were completed 	<ul style="list-style-type: none"> • Informal reprimand • Complete deficient hours • \$50 administrative penalty for each hour deficient 	<ul style="list-style-type: none"> • Formal reprimand • Complete deficient hours • \$100 administrative penalty for each hour deficient
Class C : <ul style="list-style-type: none"> • Licensee self-reported the violation and has no previous continuing education violations within ten years 	<ul style="list-style-type: none"> • Complete deficient hours 	<ul style="list-style-type: none"> • Complete deficient hours • \$50 administrative penalty for each hour deficient
<i>Aggravating and Mitigating Factors</i>		
Aggravating Factors : <ul style="list-style-type: none"> • Licensee is deficient 50% or more of the required continuing education hours 		
Mitigating Factors <ul style="list-style-type: none"> • Licensee obtained the required number of continuing education hours, but did not meet other criteria, i.e. number of hours that must be earned in-person • Licensee is deficient less than 50% of the required continuing education hours • Licensee voluntarily completed the deficient hours after becoming aware of the deficiency 		

Confidentiality – VLA §801.402(21), RULES §573.28		
Classification Criteria	Minimum Sanction	Maximum Sanction
<p>Class A:</p> <ul style="list-style-type: none"> Confidential information released with intent to do reputational, financial, or other harm Criteria for Class B are met and Respondent has two or more previous confidentiality violations within ten years 	<ul style="list-style-type: none"> One year probated suspension Formal reprimand \$1,000 administrative penalty 	<ul style="list-style-type: none"> Revocation Statutory maximum penalty
<p>Class B:</p> <ul style="list-style-type: none"> Confidential information released Criteria for Class C are met and Respondent has previous confidentiality violation within ten years 	<ul style="list-style-type: none"> Formal reprimand \$500 administrative penalty Jurisprudence examination 	<ul style="list-style-type: none"> Formal reprimand \$2,000 administrative penalty Jurisprudence examination
<p>Class C:</p> <ul style="list-style-type: none"> Confidential information released for purpose of rebutting the client’s public criticism of veterinary services 	<ul style="list-style-type: none"> Informal reprimand 	<ul style="list-style-type: none"> Informal reprimand \$500 administrative penalty Jurisprudence examination
<i>Aggravating Factors</i>		
<p>Aggravating Factors:</p> <ul style="list-style-type: none"> Information released for the purpose of rebutting public criticism exceeded the scope of the original criticism 		

Controlled Substance Records Keeping – RULES §573.50		
Classification Criteria	Minimum Sanction	Maximum Sanction
<p>Class A:</p> <ul style="list-style-type: none"> • Criteria for Class B violation are met and diversion occurs • Criteria for Class B violation are met and Respondent has previous controlled substance violation within ten years • No controlled substance records are kept • Discrepancies in the records are severe • Fraudulent entries made by Respondent 	<ul style="list-style-type: none"> • Formal reprimand • \$2,000 administrative penalty • Follow-up report to the Board on controlled substance records 	<ul style="list-style-type: none"> • Five-year suspension, probated or enforced • Formal reprimand • Statutory maximum administrative penalty • Periodic reporting to the Board on controlled substance records • Continuing education
<p>Class B:</p> <ul style="list-style-type: none"> • Criteria for Class C violation are met and diversion occurs • Criteria for Class C violation are met and Respondent has previous controlled substance violation within ten years • Discrepancies in the controlled substance records are moderate 	<ul style="list-style-type: none"> • Formal reprimand • \$1,000 administrative penalty • Follow-up report to the Board on controlled substance records 	<ul style="list-style-type: none"> • Formal reprimand • \$3,000 administrative penalty • Follow-up report to the Board on controlled substance records • Continuing education
<p>Class C:</p> <ul style="list-style-type: none"> • Discrepancies in the controlled substance records are minor 	<ul style="list-style-type: none"> • Informal reprimand 	<ul style="list-style-type: none"> • Formal reprimand • \$500 administrative penalty • Continuing education
<i>Aggravating and Mitigating Factors</i>		
<p>Aggravating Factors:</p> <ul style="list-style-type: none"> • Licensee was directly responsible for omissions in the records • Licensee owns or orders controlled substances for the facility • Facility uses high volume of controlled substances • Balance on hand has not been updated for four weeks or more 		
<p>Mitigating Factors:</p> <ul style="list-style-type: none"> • Licensee rectified recordkeeping errors and accounted for previous discrepancies • Licensee does not own or order controlled substances for the facility • Licensee has not practiced at the facility for an extended amount of time or has not worked regularly at the facility • Facility uses low volume of controlled substances 		

Default Schedule – Non-Enumerated Violation of Occupations Code or Board Rule		
Classification Criteria	Minimum Sanction	Maximum Sanction
<p>Class A:</p> <ul style="list-style-type: none"> • Failure to comply with substantive provision that causes death or severe harm to an animal or to the public • Commission or conviction of a felony in or connected with the practice of veterinary medicine or equine dentistry • Commission or conviction of an offense under Section 42.09, 42.091, or 42.092, Penal Code • Fraud in testing, reporting, or certifying the presence or absence of animal disease • Criteria for Class B are met and Respondent has previous violation within ten years 	<ul style="list-style-type: none"> • One year probated suspension • Formal reprimand • \$1,000 administrative penalty 	<ul style="list-style-type: none"> • Revocation • Statutory maximum administrative penalty
<p>Class B:</p> <ul style="list-style-type: none"> • Failure to comply with substantive provision that harms or creates risk of harm to an animal or to the public • Commission or conviction of a Class A or B misdemeanor connected with the practice of veterinary medicine or equine dentistry • Failure to cooperate with Board inspection or investigation • Criteria for Class C are met and Respondent has previous violation within ten years 	<ul style="list-style-type: none"> • Formal reprimand • \$1,000 administrative penalty 	<ul style="list-style-type: none"> • One year probated suspension • Formal reprimand • Statutory maximum administrative penalty • Continuing education
<p>Class C:</p> <ul style="list-style-type: none"> • Failure to comply with procedural provision • Failure to refer a case 	<ul style="list-style-type: none"> • Informal reprimand 	<ul style="list-style-type: none"> • Formal reprimand • \$1,000 administrative penalty • Continuing education

Patient Record Keeping – RULES §573.52, §573.53		
Classification Criteria	Minimum Sanction	Maximum Sanction
<p>Class A:</p> <ul style="list-style-type: none"> • Omission or illegible record causes death or serious harm to an animal • Any falsified record entry • Any omission made with the intent to avoid discipline or liability • Criteria for Class B are met and Respondent has previous record keeping violation within ten years 	<ul style="list-style-type: none"> • One year probated suspension • Formal reprimand • \$1,000 administrative penalty • Continuing education 	<ul style="list-style-type: none"> • Revocation • Statutory maximum administrative penalty
<p>Class B:</p> <ul style="list-style-type: none"> • Pervasive record keeping errors • Omission or illegible record creates risk of death or serious harm to an animal • Failure to properly maintain or transfer records • Non-contemporaneous entry without notation of time of entry • Criteria for Class C are met and Respondent has previous record keeping violation within ten years 	<ul style="list-style-type: none"> • Formal reprimand • \$500 administrative penalty • Continuing education 	<ul style="list-style-type: none"> • Formal reprimand • \$2,000 administrative penalty • Continuing education
<p>Class C:</p> <ul style="list-style-type: none"> • Minor omission or illegible record that does not create risk of harm to an animal • Record keeping errors are not pervasive 	<ul style="list-style-type: none"> • Informal reprimand 	<ul style="list-style-type: none"> • Informal reprimand • \$500 administrative penalty • Continuing education

Standard of Care – VLA §801.402(16), RULES §573.22

Classification Criteria	Minimum Sanction	Maximum Sanction
<p>Class A:</p> <ul style="list-style-type: none"> • Act or omission committed by Respondent causes death or serious harm to an animal • Any act or omission done with the intent to cause harm to an animal • Criteria for Class B are met and Respondent has previous standard of care violation within ten years 	<ul style="list-style-type: none"> • One year probated suspension • Formal reprimand • \$1,000 administrative penalty • Continuing education 	<ul style="list-style-type: none"> • Revocation • Statutory maximum administrative penalty
<p>Class B:</p> <ul style="list-style-type: none"> • Act or omission causes harm or creates risk of death or harm to an animal • Act or omission committed by a person under Respondent’s supervision causes death or serious harm, or the risk of death or serious harm, to an animal • Criteria for Class C are met and Respondent has previous standard of care violation within ten years 	<ul style="list-style-type: none"> • Formal reprimand • \$500 administrative penalty • Continuing education 	<ul style="list-style-type: none"> • One year probated suspension • Formal reprimand • Statutory maximum administrative penalty • Continuing education
<p>Class C:</p> <ul style="list-style-type: none"> • Act or omission creates risk of minor harm to an animal 	<ul style="list-style-type: none"> • Informal reprimand 	<ul style="list-style-type: none"> • Formal reprimand • \$1,000 administrative penalty • Continuing education

Substance Abuse – VLA §801.402(3)

Classification Criteria	Minimum Sanction	Maximum Sanction
<p>Class A:</p> <ul style="list-style-type: none"> • Diversion of controlled substances for personal use • Two or more previous Board Orders finding violations of this provision • Treatment of animal while intoxicated, resulting in harm to an animal or client 	<ul style="list-style-type: none"> • Five-year suspension, probated or enforced • Five-year peer assistance program participation • Limited practice • Periodic reporting • Formal reprimand • Supervising veterinarian 	<ul style="list-style-type: none"> • Revocation • Statutory maximum administrative penalty
<p>Class B:</p> <ul style="list-style-type: none"> • Violation of an existing peer assistance program agreement • Previous Board Order finding violation of this provision • Treatment of animal while intoxicated 	<ul style="list-style-type: none"> • Five-year probated suspension • Five-year peer assistance program participation • Formal reprimand 	<ul style="list-style-type: none"> • Five-year suspension, probated or enforced • Five-year peer assistance program participation • Supervising veterinarian • Periodic reporting • Formal reprimand
<p>Class C:</p> <ul style="list-style-type: none"> • No previous Board Orders finding violation of this provision 	<ul style="list-style-type: none"> • Informal reprimand • Two year peer assistance program participation • <i>Board Order may be confidential if licensee agrees to the order and has no previous or pending action, complaint, or investigation involving malpractice, injury, or harm to any member of the public. Chapter 467, Health & Safety Code.</i> 	<ul style="list-style-type: none"> • Formal reprimand • Five year peer assistance program participation • <i>Board Order may be confidential if licensee agrees to the order and has no previous or pending action, complaint, or investigation involving malpractice, injury, or harm to any member of the public. Chapter 467, Health & Safety Code.</i>

Aggravating and Mitigating Factors

Aggravating Factors:

- Use of illegal substance

Mitigating Factors:

- Licensee self-reported to the Board or peer assistance program
- Voluntary participation in peer assistance program or treatment program
- Licensee voluntarily surrendered DEA registration

Unnecessary or Unauthorized Treatment – VLA §801.402(12)		
Classification Criteria	Minimum Sanction	Maximum Sanction
Class A: <ul style="list-style-type: none"> • Knowingly performs or prescribes unnecessary treatment • Unauthorized but justifiable treatment causes death or serious harm to an animal 	<ul style="list-style-type: none"> • One year suspension, probated or enforced • Formal reprimand • \$1,000 administrative penalty • Jurisprudence examination 	<ul style="list-style-type: none"> • Revocation • Statutory maximum administrative penalty
Class B: <ul style="list-style-type: none"> • Unauthorized but justifiable treatment with moderate to severe risk of harm to an animal • Unauthorized but justifiable treatment causes minor harm to an animal 	<ul style="list-style-type: none"> • Formal reprimand • \$500 administrative penalty • Jurisprudence examination 	<ul style="list-style-type: none"> • Formal reprimand • \$5,000 administrative penalty • Jurisprudence examination
Class C: <ul style="list-style-type: none"> • Unauthorized but justifiable treatment with minimal risk of harm to an animal 	<ul style="list-style-type: none"> • Informal reprimand 	<ul style="list-style-type: none"> • Formal reprimand • \$1,000 administrative penalty • Jurisprudence examination
<i>Aggravating and Mitigating Factors</i>		
Aggravating Factors:		
<ul style="list-style-type: none"> • Client specifically declined the treatment performed 		
Mitigating Factors:		
<ul style="list-style-type: none"> • Unauthorized treatment performed concurrently with other justifiable, authorized treatment 		

Veterinarian Client Patient Relationship – VLA §801.402(13), §801.351, RULES §573.22

Classification Criteria	Minimum Sanction	Maximum Sanction
<p>Class A:</p> <ul style="list-style-type: none"> • Practice of veterinary medicine without first establishing VCPR causes death or serious harm to an animal • Prescribes, dispenses, or administers a controlled substance without first establishing VCPR • Criteria for Class B are met and Respondent has previous VCPR violation within ten years 	<ul style="list-style-type: none"> • One year probated suspension • Formal reprimand • \$1,000 administrative penalty 	<ul style="list-style-type: none"> • Revocation • Statutory maximum administrative penalty
<p>Class B:</p> <ul style="list-style-type: none"> • Prescribes, dispenses, or administers a prescription drug without first establishing VCPR • Practice of veterinary medicine without first establishing VCPR causes harm to an animal • Criteria for Class C are met and Respondent has previous VCPR violation within ten years 	<ul style="list-style-type: none"> • Formal reprimand • \$500 administrative penalty 	<ul style="list-style-type: none"> • One year probated suspension • Formal reprimand • Statutory maximum administrative penalty
<p>Class C:</p> <ul style="list-style-type: none"> • Practice of veterinary medicine without first establishing VCPR 	<ul style="list-style-type: none"> • Informal reprimand 	<ul style="list-style-type: none"> • Formal reprimand • \$1,000 administrative penalty

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Francisco R. Garcia, individually and d/b/a Pollos Asados Los Norteños, Maria Mayela Garcia, individually and d/b/a Pollos Asados Los Norteños, and Parrillando SA, L.L.C., d/b/a Pollos Asados Los Norteños*; Cause No. D-1-GN-16-003482; in the 126th Judicial District Court, Travis County, Texas.

Background: Defendants are owners and/or operators of a restaurant named Pollos Asados Los Norteños located at 4642 Rigsby Avenue in San Antonio, Bexar County, Texas (the "Site"). In 2016, the State initiated the suit on behalf of the Texas Commission on Environmental Quality ("TCEQ") to address the problem of excessive smoke and odors arising from the process of grilling chicken with mesquite charcoal at the Site, causing visibility, traffic, and health issues around the neighborhood, in violation of the Texas Clean Air Act and rules adopted thereunder by the TCEQ. Since suit was filed, Defendants have installed an air emissions control unit at the Site to ensure the smoke does not exceed opacity limits.

Proposed Settlement: The parties propose an Agreed Final Judgment and Permanent Injunction, which provides for an award of civil penalties of \$16,500 against Defendants, plus attorney's fees to the State in the amount of \$12,500. The Agreed Final Judgment and Permanent Injunction also orders Defendants to: properly operate their cooking equipment, using less than 25% charcoal or wood sources, to prevent excessive emissions; continue to service and maintain the air emissions control unit at the Site; and maintain an opacity level below 20% at all times.

For a complete description of the proposed settlement, the Agreed Final Judgment and Permanent Injunction should be reviewed in its entirety. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas 78701, and copies may be obtained in person or by mail for the cost of copying. A copy is also lodged with the Travis County District Court. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Tyler J. Ryska, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202000130

Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: January 14, 2020

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - December 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 December 2019 is \$41.53 per barrel for the three-month period beginning on September 1, 2019, and ending November 30, 2019. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of December 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 December 2019 is \$1.30 per mcf for the three-month period beginning on September 1, 2019, and ending November 30, 2019. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of December 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 December 2019 is \$59.80 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 December 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 December 2019 is \$2.28 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 December 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-202000128
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: January 14, 2020

◆ ◆ ◆
Notice of Hearing on §3.334 - Local Sales and Use Taxes

The Office of the Comptroller of Public Accounts received requests by interested parties to hold a public hearing pursuant to Government Code, §2001.029(b)(2) on proposed §3.334 found in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter O.

The comptroller will hold a hearing to take public comments, on Tuesday, February 4, 2020, from 9:00 a.m. until 3:00 p.m., in Room 1.111 of the William B. Travis Building, Austin, Texas 78701. Interested persons may sign up to testify beginning at 8:30 a.m. and testimony will be heard on a first come first serve basis. All persons will have 10 minutes to present their testimony and shall also provide their testimony in writing prior to their oral testimony. The proposed section was published in the January 3, 2020, issue of the *Texas Register*.

The purpose of this hearing is to receive comments from interested persons, pursuant to Government Code, §2001.029.

Questions concerning the hearing or this notice should be referred to Teresa G. Bostick, Director, Tax Policy Division. Phone Number: (512) 305-9952. E-mail address: Teresa.Bostick@cpa.texas.gov.

TRD-202000147
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: January 15, 2020

◆ ◆ ◆
Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/20/20 - 01/26/20 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 01/20/20 - 01/26/20 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202000131
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 14, 2020

◆ ◆ ◆
Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following applications have been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Barksdale Federal Credit Union (Bossier City, Louisiana) seeking approval to merge with Longview Consolidated Credit Union (Longview), with Barksdale Federal Credit Union being the surviving credit union.

An application was received from Navy Army Community Credit Union (Corpus Christi) seeking approval to merge with Third Coast

Federal Credit Union (Corpus Christi), with Navy Army Community Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202000138
John J. Kolhoff
Commissioner
Credit Union Department
Filed: January 15, 2020

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Application to Amend Articles of Incorporation

Notice is given that the following applications have been filed with the Credit Union Department (Department) and is under consideration.

An application for a change to its principal place of business was received from Velocity Credit Union, Austin, Texas. The credit union is proposing to change its domicile to 4515 Seton Center Parkway, Ste. 200, Austin, Texas.

An application for a change to its principal place of business was received from Credit Union of Texas, Dallas, Texas. The credit union is proposing to change its domicile to 900 West Bethany Drive, Allen, Texas.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202000137
John J. Kolhoff
Commissioner
Credit Union Department
Filed: January 15, 2020

◆ ◆ ◆
Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Unity One Credit Union, Fort Worth, Texas, to expand its field of membership. The proposal would permit employees of Olympus Property, working in or paid from Fort Worth, Texas, to be eligible for membership in the credit union to be eligible for membership in the credit union.

An application was received from Educators Credit Union, Waco, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in Bell, Hamilton and Limestone Counties, Texas, to be eligible for membership in the credit union to be eligible for membership in the credit union.

An application was received from Associated Credit Union of Texas #1, League City, Texas, to expand its field of membership. The pro-

posal would permit persons who live, work, worship, or attend school in Brazos County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union of Texas #2, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in Chambers County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union of Texas #3, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in Fort Bend County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union of Texas #4, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in Grimes County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union of Texas #5, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in Liberty County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union of Texas #6, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in Matagorda County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union of Texas #7, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in Montgomery County, Texas, to be eligible for membership in the credit union.

An application was received from Associated Credit Union of Texas #8, League City, Texas, to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in Wharton County, Texas, to be eligible for membership in the credit union.

An application was received from Coastal Community and Teachers Credit Union, Corpus Christi, Texas, to expand its field of membership. The proposal would permit members of the FOCUS Foundation who qualify for membership in accordance with its bylaws, to be eligible for membership in the credit union to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202000136

John J. Kolhoff
Commissioner
Credit Union Department
Filed: January 15, 2020

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 25, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that content is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **February 25, 2020**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: BASF TOTAL Petrochemicals LLC; DOCKET NUMBER: 2019-1166-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 36644, PSDTX903M5, and N007M1, Special Conditions Number 1, Federal Operating Permit Number O2551, General Terms and Conditions and Special Terms and Conditions Number 23, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$7,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$3,000; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Blake Truax dba The Barn and Merri Truax dba The Barn; DOCKET NUMBER: 2019-1054-PWS-E; IDENTIFIER: RN102883394; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 92350085 for Fiscal Year 2019; and

30 TAC §290.106(c) and (e) and §290.118(c) and (e), by failing to collect and report the results of nitrate/nitrite and secondary constituent sampling to the executive director for the January 1, 2018 - December 31, 2018, monitoring period; PENALTY: \$465; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: City of Jewett; DOCKET NUMBER: 2019-1509-MWD-E; IDENTIFIER: RN101607125; LOCATION: Jewett, Leon County; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011392001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$4,125; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Clay D. Mathis dba Big Daddys RV Park; DOCKET NUMBER: 2019-1434-PWS-E; IDENTIFIER: RN110503711; LOCATION: Hemphill, Sabine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(c) and (e) and §290.118(c) and (e), by failing to collect and report the results of nitrate/nitrite and secondary constituent sampling to the executive director for the January 1, 2018 - December 31, 2018, monitoring period; PENALTY: \$484; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Crystal Clear Special Utility District; DOCKET NUMBER: 2019-1453-PWS-E; IDENTIFIER: RN101437994; LOCATION: San Marcos, Guadalupe County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligram per liter (mg/L) for haloacetic acids (HAA5) based on the locational running annual average, and failing to comply with the MCL of 0.080 mg/L for total trihalomethanes based on the locational running annual average; PENALTY: \$810; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: CRYSTAL CLEAR WATER, INC; DOCKET NUMBER: 2019-1105-MLM-E; IDENTIFIER: RN101277309; LOCATION: Clifton, Bosque County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B) and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual of sufficient detail to provide the operator with routine maintenance and repair procedures, with protocols to be utilized in the event of a natural or man-made catastrophe, as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency; 30 TAC §290.45(b)(1)(A)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum well capacity of 1.5 gallons per minute per connection; 30 TAC §290.46(f)(2) and (3)(A)(i)(III) and (D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; and 30 TAC §290.46(v), by failing to ensure that all electrical wiring is securely installed

in compliance with a local or national electrical code; PENALTY: \$757; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: EnCana Oil & Gas (USA) Incorporated; DOCKET NUMBER: 2019-1302-AIR-E; IDENTIFIER: RN106477532; LOCATION: Gillett, Karnes County; TYPE OF FACILITY: oil and gas production facility; RULES VIOLATED: 30 TAC §116.615(2) and §122.143(4), Standard Permit Registration Number 104730, Air Quality Standard Permit for Oil and Gas Handling and Production Facilities, Special Conditions Number (m), Table 7, Federal Operating Permit Number O3847, General Terms and Conditions and Special Terms and Conditions Number 9, and Texas Health and Safety Code, §382.085(b), by failing to conduct a quarterly performance evaluation if the engine is operated for 1,000 hours or more during the quarter period; PENALTY: \$2,374; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$950 ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2019-0620-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturer; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 18978, PS-DTX752M5, and N162, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Number O1606, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 15, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(E) and (F) and §122.143(4), FOP Number O1606, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to identify all required information on the final record for a reportable emissions event; and 30 TAC §§115.722(c)(1), 116.115(c), and 122.143(4), NSR Permit Number 4477, SC Number 1, FOP Number O1606, GTC and STC Number 15, and THSC, §382.085(b), by failing to prevent unauthorized emissions, and failing to limit highly reactive volatile organic compounds emissions to 1,200 pounds or less per one-hour block period; PENALTY: \$46,439; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$18,576; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: KOTT LIVEOAKS INCORPORATED; DOCKET NUMBER: 2019-0761-PWS-E; IDENTIFIER: RN101274850; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 15 picoCuries per liter for gross alpha particle activity based on the running annual average; and 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director regarding the failure to comply with the MCL for gross alpha particle activity during the third quarter of 2018; PENALTY: \$229; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: LOYOLA GROCERIES INCORPORATED; DOCKET NUMBER: 2019-1191-PST-E; IDENTIFIER: RN102374170; LOCATION: Austin, Travis County; TYPE OF FACILITY: a 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 tank for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: P.O. Box 13087 Austin, Texas 78711-3087, (512) 339-2929.

(11) COMPANY: Memorial Health System of East Texas; DOCKET NUMBER: 2019-1269-PST-E; IDENTIFIER: RN105683270; LOCATION: Livingston, Polk County; TYPE OF FACILITY: emergency generator; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the underground storage tank system; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: MILLER WASTE MILLS, INCORPORATED; DOCKET NUMBER: 2019-0803-IWD-E; IDENTIFIER: RN100590207; LOCATION: Orange, Orange County; TYPE OF FACILITY: industrial water treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System Permit Number WQ0002835000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Number 002, by failing to comply with permitted effluent limitations; PENALTY: \$22,500; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$11,250; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(13) COMPANY: NRN BUSINESS, LLC dba Guy Food Mart; DOCKET NUMBER: 2019-1215-PST-E; IDENTIFIER: RN101879807; LOCATION: Guy, Fort Bend 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: \$5,250; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Peaceful Valley Donkey Rescue, Incorporated; DOCKET NUMBER: 2019-0079-MLM-E; IDENTIFIER: RN102792694; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: animal feeding operation; RULES VIOLATED: 30 TAC §321.47(d)(4) and (5), by failing to provide documentation or provide certification by a licensed Texas professional engineer that the existing Retention Control Structure (RCS) was properly designed and constructed in accordance with RCS sizing, embankment design and construction, and linear requirements; 30 TAC §321.47(f)(3), by failing to develop and utilize a plan for land application or implement a nutrient management plan prior to land application; 30 TAC §321.47(i)(1) and (2), by failing to maintain the required records on-site for a minimum of five years; 30 TAC §321.47(i)(1)(C) and (F) and (I), by failing to conduct preventative maintenance program and site inspections to assure the facility maintains its efficiency and to maintain records of those inspections for a minimum of five years; 30 TAC §335.5(a) and (b), by failing to not cause, suffer, allow, or permit the disposal of industrial solid waste in a landfill prior to recording in the county deed records of the county or counties in which the disposal takes place, and failing to submit the proof of deed recordation to the executive director (ED) prior to instituting disposal operations; and 30 TAC §335.6(a), by failing to notify the ED that the storage, processing, or disposal activities of industrial solid waste are planned, at least 90 days prior to engaging in such activities; PENALTY: \$7,875; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856;

REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(15) COMPANY: RANDALL L PILKINGTON; DOCKET NUMBER: 2019-1691-OSI-E; IDENTIFIER: RN105157994; LOCATION: Harleton, Harrison County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: \$175; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2520; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Polk County dba Polk County Landfill and Santek Environmental of Texas, LLC dba Polk County Landfill; DOCKET NUMBER: 2019-1332-MLM-E; IDENTIFIER: RN102668654; LOCATION: Leggett, Polk County; TYPE OF FACILITY: Type I landfill; RULES VIOLATED: 30 TAC §30.213(a) and Municipal Solid Waste (MSW) Permit Number 1384A and Site Operating Plan (SOP), Section 2.0 Personnel, Training, and Equipment, by failing to employ at least one licensed individual who supervises or manages the operations of a MSW facility; 30 TAC §330.73(a) and MSW Permit Number 1384A and SOP, Section 1.2 Recordkeeping, by failing to submit and receive approval for a permit modification prior to implementing the use of new equipment at the facility; and 30 TAC §334.127(a)(1) and TWC, §26.346(a), by failing to register an aboveground storage tank system; PENALTY: \$8,925; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(17) COMPANY: CALEB A ROSS; DOCKET NUMBER: 2019-1728-WOC-E; IDENTIFIER: RN108957358; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: Shree Sudhaya Inc dba Beer & Wine Stop; DOCKET NUMBER: 2019-1214-PST-E; IDENTIFIER: RN107705253; LOCATION: Duncanville, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Specht's Operations, LLC dba Specht's Store; DOCKET NUMBER: 2019-1264-PWS-E; IDENTIFIER: RN101217370; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(2) and (6) and §290.111(h)(2)(B) and (9), by failing to submit a Surface Water Monthly Operating Report with the required turbidity and disinfectant residual data to the executive director by the tenth day of the month following the end of the reporting period for April, May, and June 2019; PENALTY: \$242; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: TEXAS HEAT TREATING, INCORPORATED; DOCKET NUMBER: 2019-1095-MLM-E; IDENTIFIER: RN102133691; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: metal treatment; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the

Edwards Aquifer Recharge Zone; and 30 TAC §334.127(a)(1) and TWC, §26.346(a), by failing to obtain a petroleum storage tank registration for an above ground storage tank larger than 1,100 gallons; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-202000123

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 14, 2020



Enforcement Orders

An agreed order was adopted regarding City of Gladewater, Docket No. 2018-1284-PWS-E on January 7, 2020 assessing \$3,147 in administrative penalties with \$629 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ANATOMICAL MEDICAL LABORATORIES, INC., Docket No. 2018-1388-IHW-E on January 7, 2020 assessing \$6,825 in administrative penalties with \$1,365 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Sherwin-Williams Manufacturing Company, Docket No. 2018-1443-AIR-E on January 7, 2020 assessing \$7,494 in administrative penalties with \$1,498 deferred. Information concerning any aspect of this order may be obtained by contacting Robyn Babyak, 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 Skipper Beverage Company, LLC, Docket No. 2018-1724-PST-E on January 7, 2020 assessing \$6,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jaime Garcia, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Diamond Shamrock Refining Company, L.P., Docket No. 2019-0155-AIR-E on January 7, 2020 assessing \$5,960 in administrative penalties with \$1,192 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MISSION INDEV, LLC, Docket No. 2019-0299-PWS-E on January 7, 2020 assessing \$112 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jaime Garcia, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MMC PROPERTIES, INC., Docket No. 2019-0378-PST-E on January 7, 2020 assessing \$1,750 in administrative penalties with \$350 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 Enterprise Products Operating LLC, Docket No. 2019-0473-AIR-E on January 7, 2020 assessing \$4,800 in administrative penalties with \$960 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Brownfield, Docket No. 2019-0522-PST-E on January 7, 2020 assessing \$3,563 in administrative penalties with \$712 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Arconic Inc., Docket No. 2019-0551-AIR-E on January 7, 2020 assessing \$3,938 in administrative penalties with \$787 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 R. D. WALLACE OIL CO., INC., Docket No. 2019-0566-PST-E on January 7, 2020 assessing \$3,509 in administrative penalties with \$701 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Noor Sodhi LLC, Docket No. 2019-0567-PST-E on January 7, 2020 assessing \$4,623 in administrative penalties with \$924 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding EPP-Texas Acquisition, LLC, Docket No. 2019-0572-PST-E on January 7, 2020 assessing \$1,394 in administrative penalties with \$278 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 Aqua Utilities, Inc., Docket No. 2019-0578-PWS-E on January 7, 2020 assessing \$1,613 in administrative penalties with \$322 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CITGO Refining and Chemicals Company L.P., Docket No. 2019-0609-AIR-E on January 7, 2020 assessing \$6,075 in administrative penalties with \$1,215 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FAIZAYSH ENTERPRISE INC, Docket No. 2019-0650-PST-E on January 7, 2020 assessing \$5,813 in administrative penalties with \$1,162 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jack Willis, Docket No. 2019-0657-WQ-E on January 7, 2020 assessing \$2,000 in admin-

istrative penalties with \$400 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CASTILLO FUEL STOP INC, Docket No. 2019-0670-PST-E on January 7, 2020 assessing \$3,750 in administrative penalties with \$750 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, 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 TJP Enterprises, LLC, Docket No. 2019-0681-MSW-E on January 7, 2020 assessing \$3,750 in administrative penalties with \$750 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 Austin Super Retail, LLC, Docket No. 2019-0682-PST-E on January 7, 2020 assessing \$4,532 in administrative penalties with \$906 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mitsubishi Caterpillar Forklift America Inc., Docket No. 2019-0698-AIR-E on January 7, 2020 assessing \$2,513 in administrative penalties with \$502 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 Professional General Management Services, Inc., Docket No. 2019-0704-WOC-E on January 7, 2020 assessing \$500 in administrative penalties with \$100 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DLUGOSCH III, LLC, Docket No. 2019-0723-PST-E on January 7, 2020 assessing \$7,316 in administrative penalties with \$1,463 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Ingleside, Docket No. 2019-0763-PWS-E on January 7, 2020 assessing \$291 in administrative penalties with \$58 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Petro-Chemical Transport, LLC, Docket No. 2019-0770-PST-E on January 7, 2020 assessing \$3,400 in administrative penalties with \$680 deferred. Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Lorenzo, Docket No. 2019-0788-MWD-E on January 7, 2020 assessing \$5,250 in administrative penalties with \$1,050 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, En-

forcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gamtex Industries LP, Docket No. 2019-0789-AIR-E on January 7, 2020 assessing \$4,125 in administrative penalties with \$825 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LLANO WEST MHP, L.P., Docket No. 2019-0792-PWS-E on January 7, 2020 assessing \$557 in administrative penalties with \$111 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Western Springs Apartments, LP, Docket No. 2019-0799-EAQ-E on January 7, 2020 assessing \$6,750 in administrative penalties with \$1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2019-0824-PWS-E on January 7, 2020 assessing \$803 in administrative penalties with \$160 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Edinburg, Docket No. 2019-0840-MSW-E on January 7, 2020 assessing \$2,963 in administrative penalties with \$592 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 Maverick County, Docket No. 2019-0851-PWS-E on January 7, 2020 assessing \$87 in administrative penalties with \$17 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WTR Real Estate Holdings, L.C., Docket No. 2019-0883-PWS-E on January 7, 2020 assessing \$350 in administrative penalties with \$70 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Natural Rainwater Harvesting & Bottling, LLC, Docket No. 2019-0891-PWS-E on January 7, 2020 assessing \$385 in administrative penalties with \$77 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Layne Properties, LLC, Docket No. 2019-0941-PWS-E on January 7, 2020 assessing \$100 in administrative penalties with \$20 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 United Electronic Recycling, LLC, Docket No. 2019-1046-MSW-E on January 7, 2020 assessing \$1,875 in administrative penalties with \$375 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 City of Ropesville, Docket No. 2019-1067-PWS-E on January 7, 2020 assessing \$688 in administrative penalties with \$137 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202000139

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 15, 2020



Enforcement Orders

An agreed order was adopted regarding the City of Junction, Docket No. 2016-2129-MLM-E on January 15, 2020, assessing \$11,241 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding German Pellets Texas, LLC, Docket No. 2017-1529-AIR-E on January 15, 2020, assessing \$15,000 in administrative penalties with \$3,000 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 Michael Espitia, Docket No. 2018-0590-MSW-E on January 15, 2020, assessing \$30,000 in administrative penalties with \$28,800 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 CRIDER'S MANAGEMENT, LLC dba Crider's Frio River Resort, Docket No. 2018-0639-PWS-E on January 15, 2020, assessing \$3,213 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 the City of Haskell, Docket No. 2018-0654-MSW-E on January 15, 2020, assessing \$27,163 in administrative penalties with \$5,432 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Chemours Company FC, LLC, Docket No. 2018-0772-AIR-E on January 15, 2020, assessing \$73,537 in administrative penalties with \$14,707 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding SSIA GROUP INC dba Gateway Foodmart 3, Docket No. 2018-0848-PST-E on January 15, 2020, assessing \$5,743 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, 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 SHERA CORPORATION dba Dairy Way Food Mart, Docket No. 2018-0932-PST-E on January 15, 2020, assessing \$9,804 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, 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 Siesta Shores Water Control and Improvement District, Docket No. 2018-1139-PWS-E on January 15, 2020, assessing \$2,080 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sunoco Partners Marketing & Terminals L.P., Docket No. 2018-1184-AIR-E on January 15, 2020, assessing \$115,725 in administrative penalties with \$23,145 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, 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 Casita Enterprises, Inc., Docket No. 2018-1203-AIR-E on January 15, 2020, assessing \$88,420 in administrative penalties with \$17,684 deferred. Information concerning any aspect of this order may be obtained by contacting Richard Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lake Livingston Water Supply Corporation, Docket No. 2018-1230-PWS-E on January 15, 2020, assessing \$2,493 in administrative penalties with \$912 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 Allen Watts dba Lago Vista Water System, Docket No. 2018-1289-PWS-E on January 15, 2020, assessing \$457 in administrative penalties. 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 Western Dairy Transport, L.L.C., Docket No. 2018-1427-AIR-E on January 15, 2020, assessing \$1,562 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, 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 Phillips 66 Company, Docket No. 2018-1437-AIR-E on January 15, 2020, assessing \$32,814 in administrative penalties with \$6,562 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, 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 George W. Jackson dba Fort Jackson Mobile Estates, Docket No. 2018-1503-PWS-E on January 15, 2020, assessing \$1,259 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Nacogdoches, Docket No. 2018-1509-MWD-E on January 15, 2020, assessing \$7,175 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding INEOS Americas LLC, Docket No. 2018-1538-AIR-E on January 15, 2020, assessing \$16,563 in administrative penalties with \$3,312 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding BVE ENTERPRISES INC. dba Easy Stop, Docket No. 2018-1583-PST-E on January 15, 2020, assessing \$4,626 in administrative penalties with \$925 deferred. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, 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 Edward M. Moss and Lourdes Moss, Docket No. 2018-1592-PWS-E on January 15, 2020, assessing \$837 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 the City of Hooks, Docket No. 2018-1607-MWD-E on January 15, 2020, assessing \$85,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Flint Hills Resources Port Arthur, LLC, Docket No. 2018-1718-AIR-E on January 15, 2020, assessing \$15,000 in administrative penalties with \$3,000 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding 1203 Chestnut, Inc. dba All Stop Food Mart, Docket No. 2018-1756-PST-E on January 15, 2020, assessing \$10,686 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 Victoria County Water Control and Improvement District No. 2, Docket No. 2018-1760-PWS-E on January 15, 2020, assessing \$1,544 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding West Memorial Municipal Utility District, Docket No. 2019-0054-MWD-E on January 15, 2020, assessing \$41,563 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.

A default order was adopted regarding Linda W. Ball, Docket No. 2019-0070-PWS-E on January 15, 2020, assessing \$3,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of White Oak, Docket No. 2019-0072-MWD-E on January 15, 2020, assessing \$9,000 in administrative penalties with \$1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Calvert, Docket No. 2019-0082-PWS-E on January 15, 2020, assessing \$308 in administrative penalties. 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 the City of Grapevine, Docket No. 2019-0085-MWD-E on January 15, 2020, assessing \$6,000 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 DCP Operating Company, LP, Docket No. 2019-0091-AIR-E on January 15, 2020, assessing \$7,725 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding South Hampton Resources, Inc., Docket No. 2019-0105-AIR-E on January 15, 2020, assessing \$20,250 in administrative penalties with \$4,050 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 Military Highway Water Supply Corporation, Docket No. 2019-0128-PWS-E on January 15, 2020, assessing \$555 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shalimar Fort Worth, LP, Docket No. 2019-0182-MWD-E on January 15, 2020, assessing \$11,314 in administrative penalties with \$2,262 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bell County Water Control and Improvement District No. 2, Docket No. 2019-0183-MWD-E on January 15, 2020, assessing \$19,500 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 Hardin County Water Control and Improvement District No. 1, Docket No. 2019-0188-PWS-E on January 15, 2020, assessing \$157 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Covance Research Products Inc., Docket No. 2019-0189-PWS-E on January 15, 2020, assessing \$1,027 in administrative penalties with \$1,027 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Colorado City, Docket No. 2019-0222-MWD-E on January 15, 2020, assessing \$3,375 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 the City of Chillicothe, Docket No. 2019-0244-PWS-E on January 15, 2020, assessing \$1,547 in administrative penalties with \$1,092 deferred. Information concerning any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Methodist Hospital, Docket No. 2019-0325-AIR-E on January 15, 2020, assessing \$11,285 in administrative penalties with \$2,257 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 Huntsman Petrochemical LLC, Docket No. 2019-0365-IWD-E on January 15, 2020, assessing \$18,150 in administrative penalties with \$3,630 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding XPERT TRANSPORTATION, LLC, Docket No. 2019-0371-PST-E on January 15, 2020, assessing \$16,158 in administrative penalties with \$3,231 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 Murphy Oil USA, INC dba Murphy USA 5665, Docket No. 2019-0392-PST-E on January 15, 2020, assessing \$18,777 in administrative penalties with \$3,755 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PAK PETROLEUM MARKETING, INC., Docket No. 2019-0402-PST-E on January 15, 2020, assessing \$10,048 in administrative penalties with \$2,009 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 Tidehaven Independent School District, Docket No. 2019-0483-PWS-E on January 15, 2020, assessing \$157 in administrative penalties with \$157 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, 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 NIROJ CORPORATION dba Cigarette Mart, Docket No. 2019-0515-PST-E on January 15, 2020, assessing \$31,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jaime C. Garcia, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202000146

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 15, 2020



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 159607

APPLICATION. Celina Ready Mix, LLC, P.O. Box 1437, Colleyville, Texas 76034-1437 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 159607 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located on the north side of County Road 53 approximately 0.35 mile east of its intersection with County Road 51, Celina, Collin County, Texas 75009. 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=33.291278&lng=-96.795297&zoom=13&type=r>. This application was submitted to the TCEQ on December 23, 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 January 6, 2020.

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:

Thursday, February 20, 2020, at 6:00 p.m.

Hampton Inn & Suites Dallas/Frisco North-FieldhouseUSA

6070 Sports Village Road

Frisco, Texas 75033

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 Dallas/Fort Worth Regional Office, located at 2309 Gravel Dr., Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Celina Redi Mix, LLC, P.O. Box 1437, Colleyville, Texas 76034-1437, or by calling Ms. Monique Wells, Environmental Consultant, CIC Environmental, LLC at (512) 292-4314.

Notice Issuance Date: January 10, 2020

TRD-202000134

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 15, 2020



Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 25, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts

or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 25, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: GRANBURY EXCAVATING, INC.; DOCKET NUMBER: 2018-1014-WQ-E; TCEQ ID NUMBER: RN110437894; LOCATION: 10500 Mitchell Bend Court near Rainbow, Hood County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: TWC, §28A.051(a) and 30 TAC §342.25(b), by failing to register the site as an APO no later than the 10th business day before the beginning date of regulated activities; and TWC, §26.121, 40 Code of Federal Regulations, §122.26(c), and 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; PENALTY: \$6,125; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202000125

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 14, 2020



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 25, 2020**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the

statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 25, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Audelia Herrera and Salomon Vasquez dba Salomon Vasquez & Sons and dba Tony's Construction Garbage Cleanup and Demolition Work; DOCKET NUMBER: 2018-0712-MSW-E; TCEQ ID NUMBER: RN109785816; LOCATION: 10744 Mile 1-1/2 West Road, Mercedes, Hidalgo County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW); RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$2,625; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Emmanuel Mendoza dba Mendoza Body Shop; DOCKET NUMBER: 2018-1200-AIR-E; TCEQ ID NUMBER: RN104363270; LOCATION: 3100 Gateway Boulevard East, El Paso, El Paso County; TYPE OF FACILITY: auto body refinishing facility; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; and THSC, §382.085(b) and 30 TAC §115.426(1)(B)(i), by failing to maintain records; PENALTY: \$2,625; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: William Dennis Cowart; DOCKET NUMBER: 2018-1505-MSW-E; TCEQ ID NUMBER: RN109966317; LOCATION: 500 feet Southeast of County Road 213 (Old Highway 69) and County Road 213B (Danny Reed Road) near Huntington, Angelina County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$1,312; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202000126

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 14, 2020



Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **February 25, 2020**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 25, 2020**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: A-2 Convenience LLC dba Super Stop 181; DOCKET NUMBER: 2019-0030-PST-E; TCEQ ID NUMBER: RN101447712; LOCATION: 6793 United States Highway 181 North, Floresville, Wilson County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor USTs for releases at a frequency of at least once every 30 days; TWC, §26.3475(c)(2) and 30 TAC §334.42(i), by failing to inspect all sumps, including dispenser sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to ensure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquids or debris; TWC, §26.3475(d) and 30 TAC §334.49(a)(4), by failing to provide corrosion protection to all underground metal components of a UST system; 30 TAC §334.75(b), by failing to contain and immediately clean up a spill of any petroleum product from a UST system that is less than 25 gallons; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting a delivery of a regulated substance into

the USTs; and 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; PENALTY: \$18,142; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: CLIFTON FOOD MART, L.L.C. dba Clifton Food Mart; DOCKET NUMBER: 2019-0361-PST-E; TCEQ ID NUMBER: RN101662724; LOCATION: 714 South Avenue G, Clifton, Bosque County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1), 30 TAC §334.50(b)(1)(A), and TCEQ Agreed Order Docket Number 2016-1158-PST-E, Ordering Provision Number 2.b.i., by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$31,500; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: J.P. GAS & MEGAMART INC. dba J P Truckstop; DOCKET NUMBER: 2018-1071-PST-E; TCEQ ID NUMBER: RN102041225; LOCATION: 45950 Interstate 10 West, Winnie, Chambers County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.74, by failing to investigate suspected releases of a regulated substances within 30 days of discovery; and 30 TAC §334.72, by failing to report a suspected release to TCEQ within 24 hours of discovery; PENALTY: \$30,174; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: M J H Star Enterprises, Inc. dba Airline Food Mart; DOCKET NUMBER: 2019-0258-PST-E; TCEQ ID NUMBER: RN102022902; LOCATION: 5610 Airline Drive, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once every 30 days, in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, B, and C; PENALTY: \$4,725; STAFF ATTORNEY: John S. Mercurief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202000127

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: January 14, 2020



Notice of Public Meeting for a New Municipal Solid Waste Facility: Registration Application No. 40306

Application. Waste Management of Texas, Inc. (Applicant), 9900 Giles Road, Austin, Texas 78754, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Municipal Solid Waste (MSW) Registration No. 40306, to construct and operate a Type V MSW Transfer Station. The proposed facility, Austin Community Transfer Station, will be located 500-ft north of intersection of Giles Road and US Hwy 290 Austin, Texas 78754, in Travis County. The transfer station will be located entirely within the permit boundary of the Austin Community Recycling and Disposal Facility (an existing Type 1 MSW facility). The Applicant is requesting authorization to store, process, and transfer municipal solid waste which includes household, yard, commercial, construction, and demolition waste as well as brush, rubbish, Class 2 non-hazardous industrial solid waste, Class 3 non-hazardous industrial solid waste, shredded or quartered tires, and certain special wastes. 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://arcg.is/1yrXqi>. For exact location, refer to application.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, the adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Public Comment/Public Meeting. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the registration application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the registration application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the registration application, members of the public may state their formal comments orally into the official record. All formal comments will be considered before a decision is reached on the registration application. The executive director is not required to file a response to comments.

The Public Meeting is to be held:

Thursday, February 6, 2020 at 7:00 p.m.

Bluebonnet Trail Elementary (cafeteria)

11316 Farmhaven Road

Austin, Texas 78754

Information. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. If you need more information about the registration application or the registration process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. *Si desea informacion en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The registration application is available for viewing and copying at the University Hills Branch Library, 4721 Loyola Ln., Austin, Texas 78723, and may be viewed online at <https://www.wm.com/wm/permits-texas/permits.jsp>. Further information may also be obtained from Waste Management of Texas, Inc. at the address stated above or by calling Charles Rivette at (713) 253-4497.

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.

Issue Date: January 8, 2020

TRD-202000135

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 15, 2020

◆ ◆ ◆
Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Lobby Activities Report due November 12, 2019

Adam Goldman, 208 W. 14th St., Ste. 106, Austin, Texas 78701

Lilyanne H. McClean, 1701 Brun St., Ste. 200, Houston, Texas 77019

Samantha Stinnett, 919 Congress Ave., Ste. 720, Austin, Texas 78701

Deadline: Personal Financial Statement due October 31, 2019

Rob D. Block, 4315 Darter St., Houston, Texas 77009

Deadline: Personal Financial Statement due September 12, 2019

Jason B Peeler, 3007 FM 539, Floresville, Texas 78114

Deadline: Semiannual Report due July 15, 2019 for Candidates

Borris Lee Miles, 5302 Almeda Rd., Houston, Texas 77004

Robert K. Inselmann, Jr., P.O. Box 1963, Lufkin, Texas 75902

Deadline: 30-Day Before-Election Report due October 7, 2019 for Candidates

James A. Armstrong III, 1839 Leath St., Dallas, Texas 75212

Adrian Garcia, P.O. Box 10087, Houston, Texas 77018

Deadline: 8-Day Before-Election Report due October 28, 2019 for Candidates

Sarah E. Laningham, 21714 Sierra Long Dr., Richmond, Texas 77407

James A. Armstrong III, 1839 Leath St., Dallas, Texas 75212

Adrian Garcia, P.O. Box 10087, Houston, Texas 77018

TRD-202000073

Anne Temple Peters

Executive Director

Texas Ethics Commission

Filed: January 9, 2020

◆ ◆ ◆
Texas Facilities Commission

Request for Proposals (RFP) #303-1-20622B

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts - Enforcement Division (CPA), announces the issuance of Request for Proposals (RFP) No. 3031-20622B. TFC seeks a five (5) or ten (10) year lease of approximately 6,205 square feet of office space in South/Southwest Travis, Hays or Comal County, Texas.

The deadline for questions is February 3, 2020, and the deadline for proposals is February 10, 2020, at 3:00 P.M. The award date is April 16, 2020. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at Evelyn.Esquivel@tfc.state.tx.us. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmart-buy.com/sp/303-1-20622B>.

TRD-202000155

Rico Gamino

Director of Procurement

Texas Facilities Commission

Filed: January 15, 2020

◆ ◆ ◆
Request for Proposals (RFP) #303-1-20682

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-1-20682. TFC seeks a five (5) or ten (10) year lease of approximately 51,320 square feet of office space in Dallas, Dallas County, Texas.

The deadline for questions is February 3, 2020, and the deadline for proposals is February 10, 2020, at 3:00 p.m. The award date is April 22, 2020. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at Evelyn.Esquivel@tfc.state.tx.us. A copy of the RFP may be downloaded from the Electronic State Business Daily at <http://www.txsmart-buy.com/sp/303-1-20682>

TRD-202000153

Rico Gamino

Director of Procurement

Texas Facilities Commission

Filed: January 15, 2020

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and

policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 6, 2020 to January 10, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, January 17, 2020. The public comment period for this project will close at 5:00 p.m. on Monday, February 17, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: City of Port Aransas

Location: 72-acre project site is located in and adjacent to the Corpus Christi Ship Channel within Port Aransas, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.835804, -97.076960

Project Description: The applicant proposes to mechanically and/or hydraulically excavate approximately 465,500 cubic yards of material from a 15.61-acre area to a depth of -10 feet below mean high water (MHW) to create a marina. The applicant also proposes to create an access channel to the marina by dredging approximately 41,000 cubic yards of material from an approximately 2.35-acre area. The marina access channel would be 220 feet wide and -14 feet deep mean lower low water (MLLW). In addition, the applicant proposes to construct 6 docks, 201 slips and 440 pilings measuring 35-feet in length each within the marina. Sheet piles would be installed along the edges of the entrance channel to function as breakwaters and a bulkhead would be installed within the marina area for bank stabilization. Support pilings, batter piles, and steel/concrete sheet piles will extend 5.5 feet above the mean low tide (MLT). The proposed breakwaters are 723 feet in length on the west side of the breakwater and 522 feet on the east side of the breakwater. The excavated material would be placed and contained within an approximately 37.5-acre upland area within the project site and used for a 24-foot wide by 5,650-foot long roadway and (2) 4-foot wide sidewalks along the access roadway. The applicant also proposes the placement of fill material within a 0.03-acre palustrine emergent (PEM) wetland. To minimize offsite sediment flow, a temporary dike would be constructed around the perimeter of the bulkhead and silt fence would be placed around the perimeter of the dredge material placement area for the life of the project until permanent stabilization is achieved. The purpose of both erosion and sedimentation control devices is to contain dredge material to the project footprint and reduce sediment flow into the Corpus Christi Ship Channel. Additionally, a water outlet weir would be installed to allow excess water to drain offsite. The weir would be adjusted to prevent runoff from exceeding 300 milligrams/liter for total suspended solids.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2000-02968. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 20-1107-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202000144

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: January 15, 2020

Office of the Governor

Notice of Public Hearing on Proposed Revisions to 1 TAC Chapter 3, Subchapter H

The Texas Crime Stoppers Council (Council) will conduct a public hearing to receive testimony regarding proposed amendments to 1 TAC §§3.9000, 3.9005 - 3.9007, 3.9011, 3.9015, 3.9017, 3.9019, and 3.9021; the proposed new rule at §3.9025; and the proposed repeal of §3.9010 and §3.9013 under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed amendments to the existing rules would update the Council's policies and procedures to provide a smoother operating framework for the Council and crime stoppers organizations (organizations). The proposed amendments, as well as the new rule, are also in response to statutory revisions to the Texas Government Code enacted by the 86th Legislature, Regular Session, in House Bill 3316. The Council proposes the repeal of §3.9010 and §3.9013 because it is proposing to consolidate the reporting requirements for organizations in a single amended rule at §3.9011.

The public hearing on these proposals will be held on January 28, 2020 at 1:00 p.m. in the Kester Conference Room at the Office of the Governor, located at 1100 San Jacinto Blvd., Austin, Texas 78701. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing. While any person with pertinent comments or statements will be granted an opportunity to present them during the course of the hearing, the Council reserves the right to restrict statements in terms of time or repetitive content.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Margie Fernandez-Prew, Director of the Council, at (512) 463-1914 or email margie.fernandez-prew@gov.texas.gov.

Written comments regarding the proposals may also be submitted to Margie Fernandez-Prew, Office of the Governor, Texas Crime Stoppers Council, P.O. Box 12428, Austin, Texas 78711 or to txcrimestoppers@gov.texas.gov with the subject line "Council Rules" or "Repeal of Council Rules," as applicable. The deadline for receipt of comments is 5:00 p.m. CST on February 3, 2020.

TRD-202000151

Margie Fernandez-Prew

Director, Crime Stoppers Program

Office of the Governor

Filed: January 15, 2020

Department of State Health Services

Emergency Medical Services Penalty Matrix

Texas Health and Safety Code (Code), Chapter 773 authorizes the Department of State Health Services (department) to regulate emergency medical services (EMS) in this state. The regulatory goals are to protect human health and safety and to ensure standard practices and an environment to protect the citizens of and visitors to Texas when they have

a health emergency. To achieve these goals, the department performs routine inspections, complaint investigations, and other regulatory activities.

The department has rulemaking authority under Chapter 773 of the Code to implement the chapter, including the authority to establish health and safety standards for EMS providers and personnel. The department's EMS rules are found at Texas Administrative Code, Title 25, Part 1, Chapter 157, Subchapters A, B, C, and D. Additionally, the department has the authority under Chapter 773 of the Code to revoke, suspend, refuse to renew a license or certificate, reprimand, place on probation, and/or assess administrative penalties to enforce violations of EMS laws and rules.

The department publishes the EMS Penalty Matrix (matrix) to inform the public and the regulated EMS industry about the department's enforcement policies. The penalties set forth in the matrix are created to promote compliance with the EMS statute and rules, promote public confidence in the EMS industry, and deter conduct detrimental to the health and safety of the citizens of and visitors to Texas. The matrix promotes transparency in the department's regulatory efforts to protect Texas consumers, and provides notice of these regulatory standards to the public and the regulated EMS industry. The matrix encourages consistent, uniform, and fair assessment of penalties by the department for violations of the EMS rules promulgated in Texas Administrative Code, Title 25, Part 1, Chapter 157, Subchapters A, B, C, and D. The list of violations in the matrix provides a corresponding citation to the appropriate section of the EMS rules for each violation.

The department has sought and received input from the Governor's EMS and Trauma Advisory Council.

The actual penalty assessed in a particular enforcement case remains within the discretion of the department. In determining the penalty, the department will take into account any aggravating or mitigating factors, and may reduce or increase the penalty.

The department shall consider the following when assessing a penalty: (1) previous violations; (2) the seriousness of the violation; (3) any hazard to the health and safety of the public; (4) the person's demonstrated good faith; and (5) such other matters as justice may require.

The department may offer to settle disputed claims as deemed appropriate through various means including, but not limited to, informal conference, reduced penalties, reduced license sanctions, or other appropriate lawful means, subject to approval of the commissioner, on a case-by-case basis. In addition to the listed penalties, the department may propose License Revocation for egregious or multiple instances of critical violations. All decisions made by the department related to violations of Subchapters A, B, C, or D are based on current circumstances, including extant information and laws.

The matrix may be reviewed and revised. This matrix shall be effective immediately upon publication in the *Texas Register* and shall supersede the current department procedures for assessing penalties for violations of Texas Administrative Code, Title 25, Chapter 157, Subchapters A, B, C, and D.

157.11 AND 157.16 EMS PROVIDER

	A	B	C	D	E	F	G	H	I	J	K	L
1.	The actual penalty assessed in a particular enforcement case remains within the discretion of the Department of State Health Services (department). In determining the penalty, the department will take into account any aggravating or mitigating factors, and may reduce or increase the penalty, as justice may require.											
2.	Rule/Penalty	Reprimand	\$ 375.00	\$ 1,875.00	\$ 3,750.00	\$ 5,625.00	\$ 7,500.00	Suspension One Month	Suspension Three Months	Suspension Six Months	Revoke	Additional
3.	Responsibility 157.11(n)											
4.	(1) assuring that all response-ready and in-service vehicles are available 24 hours a day and seven days a week, maintained, operated, equipped and staffed in accordance with the rules and regulations of the department;	X										
5.	(2) each EMS provider shall develop, implement, maintain, and evaluate an effective, ongoing, system-wide, data-driven, interdisciplinary quality assessment and performance improvement program. The program shall be individualized to the provider and shall, at a minimum, include: (A)-(D)				X							
6.	(A) the standard of patient care as directed by the medical director's protocols and medical director input into the provider's policies and standard operating procedures;		X									
7.	(B) the competency of the patient care provided by the personnel;		X									
8.	(C) monitoring the quality of patient care and taking appropriate and immediate corrective action to ensure that quality of care is maintained in accordance with the existing standards of care and the provider medical director's signed, approved protocols;		X									
9.	(D) the program shall include, but not be limited to, an ongoing program that achieves measurable improvement in patient care outcomes and reduction of medical errors;		X									
10.	(3) provide an assessment or provide documentation that its personnel will continue to participate in the local regional advisory council			X								
11.	(4) when an air ambulance is initiated through any other method than the local 911 system the air service providing the air ambulance is required to notify the local 911 center or the appropriate local response system for the location of the response at time of launch. This would not include interfacility transports or schedule transports			X								
12.	(5) ensuring that all personnel are currently certified or licensed by the department;											Go to 157.16(d)(14).
13.	(6) assuring that all personnel, when on an in-service vehicle or when on the scene of an emergency, are prominently identified by, at least, the last name and the first initial of the first name, the certification or license level and the EHS provider's name.				X							
14.	(7) assuring the confidentiality of all patient information is in compliance with all federal and state laws;			X								
15.	(8) assuring that informed Treatment/Transport Refusal forms are signed by persons (relating patient, or blood donor) who understand and need informed Treatment/Transport Refusal form cannot be obtained;											
16.	(9) assuring that patient care reports are completed accurately for all patients and meet standards as outlined in 25 Texas Administrative Code, Chapter 103;			X								
17.	(10) assuring that patient care reports are provided to facilities receiving the patient: (A)-(D)				X							
18.	(A) whenever operationally feasible, the report shall be provided to the receiving facility at the time the patient is delivered or a full written or computer generated report shall be delivered to the facility within 24 hours of the delivery of the patient			X								
19.	(B) if in a response-pending status, an abbreviated documented report shall be provided at the time the patient is delivered and a completed written or computer generated report shall be delivered to the facility within 24 hours of the delivery of the patient;			X								
20.	(C) the abbreviated report shall document, at a minimum, the patient's name, patient's condition upon arrival at the scene; the prehospital care provided; the patient's condition during transport, including signs, symptoms, and responses to treatment during the transport; the patient's vital signs; the time of arrival at the scene; the departure time; hospital arrival time; and, the identification of the ambulance staff			X								
21.	(D) in lieu of subparagraph (C) of this paragraph, personnel may be required to provide written or computer generated report to the receiving facility.			X								

	A	B	C	D	E	F	G	H	I	J	K	L
	Rule/Penalty	Reprimand	\$ 375.00	\$ 1,875.00	\$ 3,750.00	\$ 5,625.00	\$ 7,500.00	Suspension One Month	Suspension Three Months	Suspension Six Months	Revoke	Additional
2	(11) assuming that all pharmaceuticals are stored according to the medical storage policy approved by the EMS provider's medical director.			X								
22	(12) assuming that staff completes a readiness inspection as written by the EMS provider's policy.			X								
23	(13) assuming that there is a preventive maintenance plan for vehicles and equipment.			X								
24	(14) assuming that staff has reviewed policies and procedures as approved by the EMS Provider and the EMS Provider Medical Director.			X								
25	(15) maintenance of medical reports. (A)-(H)				X							
26	(A) A licensed EMS provider shall maintain adequate medical reports of a patient for a minimum of seven years from the anniversary date of the date of last treatment by the EMS provider.			X								
27	(B) If a patient was younger than 18 years of age when last treated by the provider, the medical reports of the patient shall be maintained by the EMS provider until the patient reaches age 21 or for seven years from the date of last treatment, whichever is longer.			X								
28	(C) EMS provider may destroy medical records that relate to any civil, criminal or administrative proceeding only if the provider knows the proceeding has been finally resolved.			X								
29	(D) EMS providers shall retain medical records for a longer length of time than that imposed herein when mandated by other federal or state statute or regulation.			X								
30	(E) EMS providers may transfer ownership of records to another licensed EMS provider only if the EMS provider, in writing, assumes ownership of the records and maintains the records consistent with this paragraph.			X								
31	(F) Destruction of medical records shall be done in a manner that ensures continued confidentiality.			X								
32	(G) At the time of initial licensing and at each license renewal, the EMS provider and medical director must attest or provide documentation to the department a plan for the going out of business, selling, transferring the business to ensure the maintenance of the medical record as outlined in subparagraph (E) of this paragraph.			X								
33	(H) EMS provider medical records must maintain all patient care records in the physical location that is the provider's primary place of business, unless the department approves an alternate location.				X							
34	(I) Assuming that all requested patient records are made promptly available to the medical director, hospital or department when requested.			X								
35	(J) Assuming that current protocols, equipment, supply and medication lists, and the correct original Vehicle Authorization at appropriate level are maintained on each response-ready vehicle.			X								
36	(K) Monitoring and enforcing compliance with all policies and protocols.											Use if 157.11n27 does not apply
37	(L) Assuming provisions for the appropriate disposal of medical and/or biohazardous waste materials.											Go to 157.11(n)(27)
38	(M) Assuming ongoing compliance with the terms of first responder agreements.				X							Go to 157.16(d)(12).
39	(N) Assuming that all documents, reports or information provided to the department and hospital are current, accurate and complete.			X								
40	(O) Assuming compliance with all federal and state laws and regulations and all local ordinances, policies and codes at all times.			X								Aggravates - if patient put in jeopardy; Consider 157.16(d) (19). Deficient Local Government Vehicle Inspections: \$1875 per deficient inspection; If staffing violation apply that penalty as well.
41	(P) Assuming that all response data required by the department is submitted in accordance with §103.5 of this title (relating to Reporting Requirements for EMS Providers).			X								
42	(Q) Assuming that, whenever there is a change in the EMS provider's name or the service's operational assumed name, the printed name on the vehicles are changed accordingly within 30 days of the change.			X								
43	(R) Assuming that the department is notified within 30 business days whenever (A)-(G) are substituted or replaced.			X								
44	(S) Assuming that there is a change in the level of service.		X									
45			X									
46			X									

	A	B	C	D	E	F	G	H	I	J	K	L
	Rule/Penalty	Reprimand	\$ 375.00	\$ 1,875.00	\$ 3,750.00	\$ 5,625.00	\$ 7,500.00	Suspension One Month	Suspension Three Months	Suspension Six Months	Revoke	Additional
2	(C) there is a change in the declared service area as written on an initial or renewal application.		X									
47	(D) there is a change in the official business mailing address.		X									
48	(E) there is a change in the physical location of the business and/or substations.		X									
49	(F) there is a change in the physical location of patient report file storage, to assure that the department has access to these records.		X									
50	(G) there is a change of the administrator of record.		X									
51	(26) assuring that when a change of the medical director has occurred the department is notified within one business day;						X					No Medical Director = Emergency Suspension and propose to revoke and fine Failed to report a change within 1 day \$375 per day not notified (they have a medical director); Failed to report Without Medical Director per div. \$3750.
52	(27) develop, implement and enforce written operating policies and procedures required under this chapter and/or adopted by the license. Assure that each employee (including volunteers) is provided a copy upon employment and that each policy is reviewed annually. The review of the department's policies and procedures shall be made available to the department on request. Policies at a minimum shall adequately address: (A)-(I)				X							If all parts of O/A are missing, start here; if partial missing, go to that section. If any other policy not developed, implemented, enforced use 157.11(6)(39); Copies of policy, procedure and/or protocols provided to employees use 157.11(6)(14);
53	A PERSONAL PRERECTIVE EQUIPMENT			X								
54	B IMMUNIZATION			X								
55	C INFECTION CONTROL			X								
56	D MANAGEMENT - EXPOSURE			X								
57	E VEHICLE OPERATION			X								
58	INFECTION CONTROL OFFICER			X								
59	G CREDENTIALING			X								
60	H DOCUMENTATION OF PATIENT CARE			X								
61	I VEHICLE CHECKS - READINESS INSPECTIONS			X								
62	J SECURITY OF MEDICATION - CONTROLLED SUBSTANCES			X								
63	(28) assuring that manufacturers' operating instructions for all critical patient care electronic and/or technical equipment utilized by the provider are available for all response personnel;		X									
64	(29) assuring that the department is notified within five business days of a collision involving an in-service or response ready EMS vehicle that results in vehicle damage whenever:		X									
65	(30) assuring that the department is notified within one business day of a collision involving an in-service or response ready EMS vehicle that results in vehicle damage whenever there is personal liability coverage for the vehicle;		X									
66	(31) maintaining motor vehicle liability insurance as required under the Texas Transportation Code;		X									
67	(32) maintaining professional liability insurance coverage in the minimum amount of \$500,000 per occurrence, with a company licensed or deemed eligible by the Texas Department of Insurance to do business in Texas in order to secure payment for any loss or damage resulting from any occurrence arising out of, or caused by the care, or lack of care, of a patient;		X									
68	(33) assuring that the department has the service area defined in the application;											
69	documents submitted with the EMS provider application;											
70	(34) responding to requests for assistance from the highest elected official or a political subdivision or from the department during a declared emergency or other emergency situation, including regional, national, state, regional and/or local plans, when authorized;		X									
71	(35) providing written notice to the department, RAC and Emergency Medical Task Force, if the EMS provider will make staff and equipment available during a declared emergency or mass casualty situation, for a state or national mission, when authorized;		X									

157.11 AND 157.16 EMS PROVIDER

	A	B	C	D	E	F	G	H	I	J	K	L
	Rule/Penalty	Reprimand \$ 375.00	\$ 1,875.00	\$ 3,750.00	\$ 5,625.00	\$ 7,500.00	Suspension One Month	Suspension Three Months	Suspension Six Months	Revoke	Additional	
72	(36) assuring all EMS personnel receive continuing education on the provider's anaphylaxis treatment protocols. The provider shall maintain education and training records to include date, time, and location of such education or training for all its EMS personnel;			X								If repeat per employee not training or no proof of training, aggravates if patent put in jeopardy.
73	(37) immediately notify the department in writing when operations cease in any service area;				X							
74	(38) assure that all patients transported by stretcher must be in a department authorized EMS vehicle;	X										Per transport and per vehicle if applicable.
75	(39) develop or adopt and then implement policies, procedures and protocols necessary for its operations as an EMS provider, and enforce all such policies, procedures and protocols.											Try using 157.11(n)(4), 18 or 27.
76	Discipline 157.16(d)											
77	(1) failing to comply with any requirement of provider licensure as set forth in 157.11 of this title (relating to Requirements for an EMS Provider License);							X		X		Cross reference to 157.11. Revoke and consider fine of \$7500.
78	(2) operating the service while the license is under suspension;							X				
79	(3) falsifying or altering a license issued by the department;							X				
80	(4) failing to correct deficiencies as instructed by the department;							X				
81	(5) obtaining or attempting to obtain or assisting another to obtain a provider license or personnel certification by fraud, forgery, deception, or misrepresentation;									X		Revoke and consider fine of \$1875.
82	(6) providing false or misleading advertising and/or making false or misleading claims to clients or the public about the service;		X									Plus \$500 per transport.
83	(7) failing to operate a subscription service/membership program according to provisions in §157.11 of this title;		X									Plus \$500 per transport.
84	(8) failing to maintain patient confidentiality according to standards and department regulations;(This pulls in 157.11(n)(7).)			X								Plus \$250 per event, breach or occurrence.
85	(9) discriminating in the provision of services based on national origin, race, color, creed, religion, gender, sexual orientation, age, physical or mental disability.			X								
86	(10) falsifying a patient care record or any other document or record resulting from or pertaining to EMS Provider responsibilities;		X									Plus \$500 per transport.
87	(11) obtaining any fee or benefit by fraud, coercion, theft, deception, or misrepresentation.		X									Plus \$500 per transport.
88	(12) failing to give the department true and complete information when asked, regarding any alleged or actual violation of the Health and Safety Code, Chapter 775;			X								
89	(13) failing to pay the administrative penalty in full within established time frames;									X		
90	(14) failing to staff each vehicle deemed to be in service or response ready with appropriately and currently certified personnel;(This pulls in 157.11(n)(1)&(5).)											Per person and per transport.
91	(15) operating, directing, or allowing staff to operate a vehicle warning devices unnecessarily or inappropriately.	BLS X	ALS X	X								Plus \$500 per transport if applicable.
92	(16) operating, directing, or allowing any person to operate any vehicle on EMS business while under the influence of any substance that inhibits the mental or physical capacities of that person;								X			
93	(17) having been found to have operated, directed, or allowed staff to operate any vehicle while on EMS business in a reckless or unsafe manner and/or in a manner that is dangerous to the health or safety of any person;		X									Plus \$500 per transport if applicable. Plus \$500 per transport if applicable. Aggravates if no evidence of repair has occurred.
94	(18) operating, directing, or allowing staff to operate any vehicle that is not mechanically safe, clean and in good operating condition; and/or		X									
95	found in violation of any local, state, or national code or regulation pertaining to EMS operations or business practices; and/or violating any rule or standard that could jeopardize the health or safety of any person.		X									Plus \$500 per transport if applicable. Aggravates if patient health and safety is jeopardized.

	A	B	C	D	E	F	G	H	I	J	K
1.	The actual penalty assessed in a particular enforcement case remains within the discretion of the Department of State Health Services (department). In determining the penalty, the department will take into account any aggravating or mitigating factors, and may reduce or increase the penalty, as justice may require.										
2.	157.36(b)	Reprimand	Suspension Seven (7) Days	Suspension Fifteen (15) Days	Suspension Thirty (30) Days	Suspension Ninety (90) Days	Suspension Six (6) Months	Suspension One Year	Revoke	Additional Thoughts	
1.	(1) violating any provision of the Health and Safety Code, Chapter 773, and/or 25 Texas Administrative Code, as well as Federal, State, or local laws, rules or regulations affecting, but not limited to, the practice of EMS	X									
2.	(2) any conduct which is criminal in nature and/or any conduct which is in violation of any criminal, civil and/or administrative code or statute.				X						
3.	(3) failing to make accurate, complete and/or clearly written patient care reports documenting a patient's condition upon arrival at the scene, the prehospital care provided, and patient's status during transport, including signs, symptoms, and responses during duration of transport as per EMS provider's approved policy.					X					
4.	(4) falsifying any EMS record; patient record or report; or making false or misleading statements in a oral report; or destroying a patient care report.					X					
5.	(5) disclosing confidential information or knowledge concerning a patient except where required or allowed by law.	X									
6.	(6) causing or permitting physical or emotional abuse or injury to a patient or the public, and/or failing to report such abuse or injury to the employer, appropriate legal authority and/or the department							X			
7.	(7) failing to report to the employer, appropriate legal authority or the department, the event of abuse or injury to a patient or the public within 24 hours or the next business day after the event;							X			
8.	(8) failure to follow the medical director's protocol, performing advanced level or invasive treatment without medical direction or supervision, or practicing beyond the scope of certification or licensure.					X					
9.	(9) failing to respond to a call while on duty and/or leaving duty assignment without proper authority.					X					
10.	(10) abandoning a patient;					X					
11.	(11) turning over the care of a patient or delegating EMS functions to a person who lacks the education, training, experience, or knowledge to provide appropriate level of care for the patient;					X					
12.	(12) failing to comply with the terms of a department ordered probation or suspension;								X		
13.	(13) issuing a check to the department which has been returned to the department or its agent unpaid;	X									
14.	(14) discriminating in any way based on real or perceived conditions of national origin, race, color, creed, religion, sex, sexual orientation, age, physical disability, mental disability, or economic status;							X			
15.	(15) misrepresenting level of any certification or licensure;				X						
16.	(16) misappropriating medications, supplies, equipment, personal items, or money belonging to the patient, employer or any other person or entity;					X					
17.	(17) failing to take precautions to prevent misappropriating medications, supplies, equipment, personal items, or money belonging to the patient, employer or any person or entity;		X								
18.	(18) falsifying or altering, or assisting another in falsifying or altering, any department application, EMS certificate or license; or using or possessing any such altered certificate or license;										
19.	(19) committing any offense during the period of a suspension/probation or repeating any offense for which a suspension/probation was imposed within the two-year period immediately following the end of the suspension or probation;										
20.	(20) cheating and/or assisting another to cheat on any examination, written or psychomotor, by any provider licensed by the department or any institution or entity conducting EMS education and/or training or providing an EMS examination leading to obtaining certification or renewing certification or license;			X							
21.	(21) cheating and/or assisting another to cheat on any examination, written or psychomotor, by any provider licensed by the department or any institution or entity conducting EMS education and/or training or providing an EMS examination leading to obtaining certification or renewing certification or license;										
22.	(22) cheating and/or assisting another to cheat on any examination, written or psychomotor, by any provider licensed by the department or any institution or entity conducting EMS education and/or training or providing an EMS examination leading to obtaining certification or renewing certification or license;										

	A	B	C	D	E	F	G	H	I	J	K
	157.36(b)	Reprimand	Suspension Seven (7) Days	Suspension Fifteen (15) Days	Suspension Thirty (30) Days	Suspension Ninety (90) Days	Suspension Six (6) Months	Suspension One Year	Revoke	Additional Thoughts	
2.	(21) obtaining or attempting to obtain and/or assisting another in obtaining or attempting to obtain, any advantage, benefit, favor or gain by fraud, forgery, deception, misrepresentation, untruth or subterfuge;							X			
23.	(22) illegally possessing, dispensing, administering or distributing, or attempting to illegally dispense, administer, or distribute controlled substances as defined by the Health and Safety Code, Chapter 481 Subchapter B, §481.001;							X			
24.	(23) having received disciplinary action relating to an EMS certificate or license or another health provider certificate or license issued in another state or in a U.S. Territory or in another nation, or having received disciplinary action relating to another health provider certificate or license issued in Texas;										
25.	(24) failing or refusing to timely give the department full and complete information requested by the department;								X		Consider same or similar penalty
26.	(25) failing to notify the department of a change in his or her criminal history within 30 business days of the issuance of a court order, which resulted in him or her being convicted or placed on a deferred adjudication community supervision or deferred disposition for any criminal offense, other than any class C misdemeanor not directly related to EMS or other than any offense noted in §157.37(e)(5) of this title (relating to Certification or Licensure of Persons With Criminal Backgrounds);	X									
27.	(26) failing to notify the department within 5 business days of his or her being arrested, charged or indicted for any criminal offense, other than any class C misdemeanor not directly related to EMS or other than any offense noted in §157.37(e)(5) of this title;	X									
28.	(27) failing to notify the department of a change in his or her criminal history within 5 business days of the issuance of a court order, which resulted in him or her being convicted or placed on a deferred adjudication community supervision, or deferred disposition for any offense noted in §157.37(e)(5) of this title;	X									
29.	(28) failing to notify the department within 5 business days of his or her being arrested, charged or indicted for a criminal offense noted in §157.37(e)(5) of this title;	X									
30.	(29) having been convicted or placed on deferred adjudication community supervision, or deferred disposition for a criminal offense that directly relates to the duties and responsibilities of EMS personnel, as determined by the provisions of §157.37 of this title, except a person's EMS certification or paramedic license shall be suspended or revoked if the person is convicted or placed on deferred adjudication community supervision or deferred disposition for a criminal offense, noted in §157.37(e)(5) of this title;								X		
31.	(30) failing to timely complete any portion of the criminal history evaluation process, including submission of fingerprints, or timely providing information requested by the department within 60 days of notification to do so, in accordance with provisions in §157.37 of this title;								X		
32.	(31) engaging in any conduct that jeopardizes or has the potential to jeopardize the health or safety of any person;					X					
33.	(32) using alcohol or drugs to such an extent that in the opinion of the commissioner or his/her designee, the health or safety of any persons or may be endangered;							X			
34.											
35.	(33) failure by the employee, of an employer drug screening test right before, after or during an assigned EMS work or volunteer shift;										
36.	(34) resigning employment or refusing by the employee, of an employer drug screening test right before, after or during an assigned EMS work or volunteer shift;				X						
37.	(35) engaging in any activity that betrays the patient privacy respect or public trust and confidence in EMS;					X					
38.	(36) failing to use sound judgment, knowledge and/or academic ability to timely and/or accurately perform the duties or meet the responsibilities required of a certified emergency medical technician or licensed paramedic;						X				

157.36 PERSONNEL

	A	B	C	D	E	F	G	H	I	J	K
	157.36(b)	Reprimand	Suspension Seven (7) Days	Suspension Fifteen (15) Days	Suspension Thirty (30) Days	Suspension Ninety (90) Days	Suspension Six (6) Months	Suspension One Year	Revoke	Additional Thoughts	
2.											
39.	(37) delegating medical functions to other EMS personnel without approval from the medical director per approved protocols;						X				
40.	(38) failing to transport a patient and/or transport a patient to the appropriate medical facility according to the criteria for selection of a patient's destination established by the medical director;			X							
41.	(39) failing to document no-transports and reasons of care and/or follow the criteria under which a patient might not be transported, as established by the medical director;	X									
42.	(40) failing to contact medical control and/or the medical director as required by the medical director's protocols and/or EMS provider's policy and procedure when caring for or transporting a patient;	X									
43.	(41) failing to protect and/or advocate for patients/clients and/or the public from unnecessary risk of harm from another EMS certified or licensed personnel;						X				
44.	(42) falsifying employment or volunteer medical profession applications and/or failing to answer specific questions that would have affected the decision to employ or otherwise utilize while certified or licensed as an EMS personnel;				X						
45.	(43) behaving in a disruptive manner toward other EMS personnel, law enforcement, firefighters, hospital personnel, other medical personnel, patients, family members or others, that interferes with patient care or could be reasonably expected to adversely impact the quality of care rendered to a patient;				X						
46.	(44) failing to notify the department no later than 30 days of a current and/or valid mailing address;	X									
47.	(45) falsifying or altering clinical and/or internship documents for EMS students;			X							
48.	(46) falsifying or failing to complete daily readiness checks on EMS vehicles, medical supplies and/or equipment as required by EMS protocols;		X								
49.	(47) engaging in acts of dishonesty which relate to the EMS profession and/or as determined by the department;		X								
50.	(48) behavior that exploits the EMS personnel-patient relationship in a sexual way. This behavior is non-diagnostic and/or non-therapeutic, may be verbal or physical, and may include expressions or gestures that have sexual connotation or that a reasonable person would construe as such;								X		
51.	(49) falsifying information provided to the department; and										
52.	(50) engaging in a pattern of behavior that demonstrates routine response to medical emergencies without being under the policies and procedures of an EMS provider and/or first responder organization, and/or providing patient care without medical direction when required.				X		X				

A	B	C	D	E	F	G	H	I	J	K	L
Rule/Penalty	Reprimand	\$ 375	\$ 750	\$ 3,750	\$ 7,500	Suspension Seven Day	Suspension Fifteen Day	Suspension Thirty Day	Suspension Six Months	Revoke	
1	The actual penalty assessed in a particular enforcement case remains within the discretion of the Department of State Health Services (department). In determining the penalty, the department will take into account any aggravating or mitigating factors, and may reduce or increase the penalty, as justice may require.										
2	Rule/Penalty- 157.44(i)(2)										
3	(A) failing to maintain a current and active Texas EMS personnel certification at the appropriate level;							X			Instructor certification is invalid if EMS personnel certification expires
4	(B) failing to comply with the responsibilities of an instructor as in subsection (e) of this section;							X			If all escalate
5	(C) falsifying or assisting another person in falsifying an application for EMS certification;									X	
6	(D) falsifying or assisting another person in falsifying a program approval application, a self-study, a course approval application, or any supporting documentation;								X		
7	(E) falsifying or assisting another person in falsifying a course completion certificate on any other document that records or verifies course activity and/or is a part of the course record;								X		
8	(F) compromising department or program standards for verification of skills proficiency or falsifying proficiency verification records;								X		
9	(G) obtaining, or attempting to obtain, or assisting another person in obtaining or attempting to obtain certification or recertification by fraud, deception, falsification, theft, misappropriation, coercion, forgery, or misrepresentation;										
10	(H) failing to complete and submit student documents within the established time frames;					X					
11	(I) compromising or failing to maintain the order, discipline and fairness of a department-approved course or program;						X				
12	(J) delivering or allowing inadequate class presentations;						X				
13	(K) compromising an examination or examination process administered or approved by the department;									X	
14	(L) cheating or assisting another in cheating on an EMS examination, other evaluation or any other activity offered or conducted by the department, a training program approved by the department, or a provider licensed by the department;									X	
15	(M) accepting any benefit to which there is no entitlement or benefits in any manner through fraud, deception, falsification, misrepresentation, theft, misappropriation or coercion									X	
16	(N) failing to maintain appropriate policies, procedures and safeguards to ensure the safety of students; fellow instructors or other class participants;					X					
17											

	A	B	C	D	E	F	G	H	I	J	K	L
	Rule/Penalty	Reprimand	\$ 375	\$ 750	\$ 3,750	\$ 7,500	Suspension Seven Day	Suspension Fifteen Day	Suspension Thirty Day	Suspension Six Months	Revoke	
2	Instructor- 157.44(i)(2)											
3	(O) allowing recurrent use of inadequate, inoperable or malfunctioning equipment;							X				
18	(P) issuing a check to the department which is returned unpaid;	X										
19	(Q) failing to maintain education course records for initial or continuing education (CE) courses;							X				
20	(R) demonstrating an unwillingness or inability to comply with the Health and Safety Code and rules adopted thereunder;								X			
21	(S) failing to give the department true and complete information when asked regarding any alleged or actual violation of the Health and Safety Code, or the rules adopted thereunder, or failing to report a violation;										X	
22	(T) committing any violation during a probationary period;									X		
23	(U) functioning or attempting to function as an instructor during a period of suspension shall be cause for revocation of the instructor certification;										X	
24	(V) failing to report a violation of the Health and Safety Code, Chapter 773, or the rules adopted thereunder;						X					
25	(W) failing to notify the department when any current EMS student, student applicant, or certified or licensed program employee is arrested for, or received a conviction, deferred adjudication or deferred prosecution, for any crime, upon the instructor's discovery of such;	X										
26	(X) failing to notify the department of a conviction, deferred adjudication, or deferred prosecution for a crime which directly relates to the person's ability to carry out the duties and responsibilities of an EMS personnel or EMS instructor, per the guidelines and criteria outlined in §157.37 of this title;	X										
27	(Y) displaying unprofessional conduct such as, but not limited to the following:									X		
28	(i) retaliation:										X	
29	(ii) discrimination on the basis of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations;										X	
30	(iii) verbal or physical abuse; or										X	
31	(iv) inappropriate physical or sexual contact.										X	
32											X	

	A	B	C	D	E	F	G	H	I	J	K	L
	Rule/Penalty	Reprimand	\$ 375	\$ 750	\$ 3,750	\$ 7,500	Suspension Seven Day	Suspension Fifteen Day	Suspension Thirty Day	Suspension Six Months	Revoke	
2	Instructor- 157.44(j)(2)											
3	(Z) unprofessional conduct such as, but not limited to the following:											
33	(V) retaliation;									X	X	
34	(I) discrimination;										X	
35	(II) verbal or physical abuse; or										X	
36	(IV) inappropriate physical or sexual contact;										X	
37	(AA) failing to maintain a substantial amount of skill, knowledge and/or academic acuity to timely and/or accurately carry out the duties of an EMS instructor;									X		
38	(BB) failing to meet standards as required in this section;							X				Propose suspension until re-educated.
39	(CC) previous conduct on the part of the applicant during the performance of duties relating to the responsibilities of EMT personnel or an EMS instructor that is contrary to accepted standards of conduct as described in Chapter 157 of this title;								X			
40	(DD) disciplinary action relating to a certificate or license issued in another state; and/or										X	
41	(EE) misrepresenting any requirements for certification or licensure;										X	
42	Coordinator - 157.43(m)(3)											
43	(A) failing to maintain active status EMS personnel certification at the appropriate level;								X			Course Coordinator certification is invalid if EMS personnel certification expires
44	(B) failing to comply with the responsibilities of a course coordinator as defined in subsection (h) of this section;	X										
45	(C) falsifying an application for EMS certification or licensure;					X						
46	(D) falsifying a program approval application, a self-study, a course approval application, or any supporting documentation;				X							
47	(E) falsifying a course completion certificate or any other document that records or verifies course activity and/or is a part of the course record;				X							
48	(F) assisting another to obtain or to attempt to obtain personnel certification or recertification by fraud, forgery, deception, or misrepresentation;				X							
49	(G) failing to complete and submit the course applications and student documents within established time frames;	X										
50	(H) coordinating or attempting to coordinate a course above the coordinator's level of certification;			X								
51	(I) compromising or failing to maintain the order, discipline and fairness of a department-approved course or program;	X										
52												

	A	B	C	D	E	F	G	H	I	J	K	L				
	Rule/Penalty	Reprimand	\$	375	\$	750	\$	3,750	\$	7,500	Suspension Seven Day	Suspension Fifteen Day	Suspension Thirty Day	Suspension Six Months	Revoke	
2	Instructor- 157.44(I)(2)															
3	(J) allowing inadequate class presentations in a course for which the coordinator is responsible;	X														
53	(K) demonstrating a lack of supervision of personnel instructing in courses for which the coordinator is responsible;	X														
54	(L) compromising an examination or examination process administered or approved by the department;						X								X	Both
55	(M) cheating or assisting another in cheating on an EMS examination, other evaluation or any other activity offered or conducted by the department; a training program approved by the department; or a provider licensed by the department;						X								X	Both
56	(N) accepting any benefit to which there is no entitlement or benefits in any manner through fraud, deception, falsification, misrepresentation, theft, misappropriation, or coercion;						X								X	Both
57	(O) failing to maintain appropriate policies, procedures and safeguards to ensure the safety of students, instructors or other class participants;	X														
58	(P) allowing recurrent use of inadequate, inoperable, or malfunctioning equipment;					X										
59	(Q) failing to maintain the fiscal integrity of a course for which the coordinator is responsible;					X										
60	(R) issuing a check to the department which is returned unpaid;	X														Per day per incident or student.
61	(S) failing to maintain education course records;					X										
62	(T) demonstrating unwillingness or inability to comply with the Health and Safety Code and/or the rules adopted thereunder;					X										
63	(U) failing to give the department true and complete information when asked regarding any alleged or actual violation of the Health and Safety Code, or the rules adopted thereunder, or failing to report a violation;					X										
64	(V) functioning or attempting to function as a course coordinator during a period of suspension which may be cause for suspension of the coordinator													X		
65	certification;															
66	(W) committing any violation during a probationary period;							X								
67	(X) failing to report a violation of the Health and Safety Code, Chapter 773, or the rules adopted thereunder;	X														
68	(Y) failing to notify the department when any current EMS student or student applicant, or certified or licensed program employee is arrested for, or received a conviction, deferred adjudication or deferred prosecution for, any crime, upon the coordinator's discovery of such;	X														

	A	B	C	D	E	F	G	H	I	J	K	L
	Rule/Penalty	Reprimand	\$ 375	\$ 750	\$ 3,750	\$ 7,500	Suspension Seven Day	Suspension Fifteen Day	Suspension Thirty Day	Suspension Six Months	Revoke	
2												
3	Instructor- 157.44(i)(2) (Z) failing to notify the department of a conviction, deferred adjudication, or deferred prosecution for a crime which directly relates to the person's ability to carry out the duties and responsibilities of an EMS personnel or EMS course coordinator, per the guidelines and criteria outlined in §157.37 of this title; and	X										
69	(AA) demonstrating unprofessional conduct such as, but not limited to the following:				X					X		
70	(i) retaliation;											
71	(ii) discrimination; shall not discriminate on the basis of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations;										X	
72	(iii) verbal or physical abuse; or										X	
73	(iv) inappropriate physical or sexual contact.										X	
74												
75	Program - 157.32(u) Disciplinary actions. (2) Non-emergency suspension or revocation.											
76	(A) failing to comply with the responsibilities of a program as defined in subsection (6) of this section;								X			
77	(B) failing to maintain sponsorship as identified in the program application and self-study;									X		
78	(C) failing to maintain employment of at least one course coordinator whose current certifications are appropriate for the level of the program;										X	
79	(D) falsifying a program approval application, a self-study, a course notification or course approval application, or any supporting documentation;										X	
80	(E) falsifying a course completion certificate or any other document that verifies course activity and/or is a part of the course record;										X	
81	(F) assisting another to obtain or to attempt to obtain personnel certification or recertification by fraud, forgery, deception, or misrepresentation;										X	
82	(G) failing to complete and submit course notifications or course approval applications and student documents within established time frames;						X					
83	(H) offering or attempting to offer courses above the program's level of approval;										X	
84	(I) compromising or failing to maintain the integrity of a department-approved training course or program;								X			
85	(J) failing to maintain professionalism in a department-approved training course or program;									X		

	A	B	C	D	E	F	G	H	I	J	K	L
	Rule/Penalty	Reprimand	\$ 375	\$ 750	\$ 3,750	\$ 7,500	Suspension Seven Day	Suspension Fifteen Day	Suspension Thirty Day	Suspension Six Months	Revoke	
2												
3	Instructor- 157.44(U)(2)											
86	(K) demonstrating a lack of supervision of course coordinators or personnel instructing in the program's courses;							X				
87	(L) compromising an examination or examination process administered or approved by the department;										X	
88	(M) accepting any benefit to which there is no entitlement or benefitting in any manner through fraud, deception, misrepresentation, theft, misappropriation, or coercion;										X	
89	(N) failing to maintain appropriate policies, procedures, and safeguards to ensure the safety of students, instructors, or other course participants;						X					
90	(O) allowing recurrent use of inadequate, inoperable, or malfunctioning equipment;							X				
91	(P) maintaining a passing rate on the examinations for certification or licensure that is statistically and significantly lower than the state average;								X			
92	(Q) failing to maintain the fiscal integrity of the program;									X		
93	(R) issuing a check to the department which is returned unpaid;						X					
94	(S) failing to maintain records for initial or continuing education courses;								X			
95	(T) demonstrating unwillingness or inability to comply with the Health and Safety Code and/or rules adopted thereunder;										X	
96	(U) failing to give the department true and complete information when asked regarding any alleged or actual violation of the Health and Safety Code or the rules adopted thereunder;										X	
97	(V) committing a violation within 24 months of being placed on probation;										X	
98	(W) offering or attempting to offer courses during a period when the program's approval is suspended;										X	
99	(X) a paramedic program receiving revocation of their accreditation by CAAHEP/CoAEMSP or any other organization that provides nationally recognized EMS accreditation; and/or (Y) for starting a course, program or class before receiving official approval from the 100 department.									X		Revoke any paramedic course approvals; Suspend ECA, EMT AND AEMT courses until they can meet requirements for BLS program.

TRD-202000154
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: January 15, 2020

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Licensing Actions for Radioactive Materials

During the first half of December, 2019, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Houston	Medical Center Cardiovascular Association	L07032	Houston	00	12/13/19
Throughout TX	MES Partners Inc.	L07029	Corpus Christi	00	12/02/19
Throughout TX	Olivier International L.L.C.	L07031	Midland	00	12/03/19
Tioga	Mid-South Equine Sports Medicine and Surgery	L07030	Tioga	00	12/03/19

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Austin	Texas Department of Transportation	L00197	Austin	195	12/10/19
Austin	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Svcs.	L02117	Austin	98	12/06/19
Baytown	Exxon Mobil Corporation dba Exxonmobil Chemical Company	L01135	Baytown	91	12/11/19
Beaumont	Exxon Mobil Corporation	L00603	Beaumont	105	12/12/19
Benbrook	Weatherford International L.L.C.	L04286	Benbrook	126	12/03/19
Brownwood	3M Company	L00918	Brownwood	53	12/02/19
Cleburne	Universal Pressure Pumping Inc.	L06871	Cleburne	06	12/04/19
College Station	Texas A&M University Environmental Health & Safety	L05683	College Station	41	12/10/19
Corpus Christi	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Svcs.	L04043	Corpus Christi	57	12/06/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Corpus Christi	Radiology Associates L.L.P.	L04169	Corpus Christi	59	12/06/19
Dallas	Cardinal Health 414 L.L.C. dba Cardinal Nuclear Pharmacy Services	L02048	Dallas	158	12/05/19
Dallas	Heartplace P.A.	L04607	Dallas	72	12/02/19
Dallas	Texas Oncology Pa dba Sammons Cancer Center	L04878	Dallas	65	12/06/19
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	43	12/02/19
Dallas	Jubilant Draximage Radiopharmacies Inc. dba Jubilant Radiopharma	L06943	Dallas	07	12/09/19
Deer Park	Equistar Chemicals L.P.	L00204	Deer Park	72	12/04/19
El Paso	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Svcs.	L01999	El Paso	128	12/06/19
Fort Worth	University of North Texas Health Science Center Fort Worth	L02518	Fort Worth	50	12/12/19
Fort Worth	Cook Children's Medical Center	L04518	Fort Worth	35	12/05/19
Fort Worth	Texas Oncology P.A.	L05545	Fort Worth	66	12/10/19
Garland	Micropac Industries Inc.	L06376	Garland	01	12/09/19
Houston	American Diagnostic Tech L.L.C.	L05514	Houston	143	12/09/19
Houston	Medi Physics Inc. dba Ge Healthcare	L05517	Houston	30	12/09/19
Houston	The University Of Texas MD Anderson Cancer Center	L06227	Houston	50	12/06/19
Houston	The Methodist Hospital Research Institute dba Houston Methodist Research Institute	L06383	Houston	13	12/11/19
Killeen	Metroplex Adventist Hospital Inc dba Adventhealth Central Texas	L03185	Killeen	37	12/09/19
La Porte	Acuren Inspection Inc.	L01774	La Porte	298	12/02/19
Longview	Christus Good Shepherd Medical Center dba Christus Good Shepherd Medical Center – Longview	L06902	Longview	05	12/2/19
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	102	12/10/19
Lubbock	Methodist Children's Hospital dba Joe Arrington Cancer Center	L06900	Lubbock	07	12/04/19
Mansfield	Healthscan Imaging L.L.C.	L06856	Mansfield	11	12/12/19
Mont Belvieu	Belvieu Environmental Fuels L.L.C.	L04679	Mont Belvieu	09	12/05/19
North Richland Hills	Columbia North Hills Hospital Subsidiary L.P. dba Medical City North Hills	L02271	North Richland Hills	84	12/12/19
Paris	Texas Oncology P.A.	L04664	Paris	32	12/09/19
Pasadena	Campbell & Barnes L.L.C. dba CIMA Inspection L.L.C.	L06910	Pasadena	04	12/04/19
Plano	Heartplace P.A.	L05883	Plano	29	12/09/19
Port Neches	Huntsman Petrochemical L.L.C.	L06323	Port Neches	05	12/05/19
Richardson	Methodist Hospitals of Dallas dba Methodist Richardson Medical Center	L06475	Richardson	08	12/06/19
San Angelo	Shannon Medical Center	L02174	San Angelo	77	12/10/19
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	264	12/10/19
Taylor	Scott & White Hospital – Tayler dba Baylor Scott & White Medical Center Taylor	L03657	Taylor	38	12/03/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Texarkana	Red River Pharmacy Services	L05077	Texarkana	32	12/02/19
Throughout TX	Cardinal Health 414 L.L.C. dba National Central Pharmacy	L04781	Abilene	41	12/06/19
Throughout TX	Texas Department of Transportation	L00197	Austin	195	12/10/19
Throughout TX	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Svcs.	L01999	El Paso	128	12/06/19
Throughout TX	Lockheed Martin Corporation dba Lockheed Martin Aeronautics Company	L05633	Fort Worth	19	12/11/19
Throughout TX	Radcom Associates L.L.C.	L06676	Garland	02	12/06/19
Throughout TX	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Svcs.	L01911	Houston	166	12/09/19
Throughout TX	QC Laboratories Inc.	L04750	Houston	32	12/10/19
Throughout TX	Quartet Engineers P.L.L.C.	L06879	Houston	03	12/12/19
Throughout TX	Shared Medical Services Inc.	L06142	Nacogdoches	34	12/11/19
Throughout TX	SQS NDT L.P.	L06896	Odessa	05	12/04/19
Throughout TX	RRC Power & Energy L.L.C.	L06105	Round Rock	13	12/12/19
Throughout TX	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Svcs.	L02033	San Antonio	112	12/06/19
Throughout TX	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Svcs.	L02033	San Antonio	112	12/06/19
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	214	12/11/19
Tyler	Mother Frances Hospital Regional Health Care Center dba Christus Mother Frances Hospital – Tyler	L01670	Tyler	213	12/03/19
Tyler	Allens Nutech Inc. dba Nutech Inc.	L04274	Tyler	90	12/05/19
Yoakum	Yoakum Community Hospital	L05913	Yoakum	07	12/13/19

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Dallas	Sofie Co.	L06174	Dallas	28	12/13/19
McAllen	Texas Oncology Pa dba South Texas Cancer Center	L04880	McAllen	20	12/13/19
Throughout TX	Westlake Surgical L.P. dba The Hospital at Westlake Medical Center	L06234	Austin	09	12/10/19
Throughout TX	Tank and Vessel Builders L.P.	L06168	Baird	03	12/06/19
Throughout TX	Texas A&M University	L00448	College Station	154	12/05/19
Throughout TX	Texas Oncology P.A.	L06240	Round Rock	09	12/09/19

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Corpus Christi	Samuel Duro Oloyo M.D. P.A. dba South Texas Medical Associates	L05881	Corpus Christi	07	12/11/19
Dallas	Texas Health Presbyterian Hospital Dallas	L04288	Dallas	41	12/06/19
Dallas	E+ PET Imaging V.L.P. dba PET Imaging of Dallas	L05726	Dallas	15	12/12/19
Houston	Angiocardiac Care of Texas P.A. dba Main Heart Clinic	L05011	Houston	16	12/09/19

TERMINATIONS OF LICENSES ISSUED (continued):

Midland	Endeavor Energy Resources L.P. dba Jones Wireline Services	L05085	Midland	13	12/05/19
San Antonio	Nix Hospitals System L.L.C. dba Nix Health Care System	L06512	San Antonio	04	12/09/19

IMPOUND ORDERS ISSUED:

Name	Type of Order	License #	Address	Action	Date of Issuance
Lee, Carl E., DDS	Impound Order	R08964	2000 Crawford Street, Suite 1522, Dallas	Impound Dental/Intraoral Radiographic Unit	12/10/2019

TRD-202000148
 Barbara L. Klein
 General Counsel
 Department of State Health Services
 Filed: January 15, 2020

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 Licensing Actions for Radioactive Materials

During the second half of December, 2019, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Big Spring	Steward Texas Hospital Holdings L.L.C. dba Scenic Mountain Medical Center a Steward Family Hospital	L07033	Big Spring	00	12/23/19

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Amarillo	BSA Hospital L.L.S. dba Baptist St. Anthony's Hospital	L06573	Amarillo	10	12/23/19
Austin	PPD Development L.L.C.	L04348	Austin	23	12/19/19
Beaumont	Cardiac Imaging Inc.	L06565	Beaumont	17	12/17/19
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	131	12/23/19
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	135	12/17/19
Dallas	Alliance Geotechnical Group Inc.	L05314	Dallas	39	12/16/19
Dallas	MTV IR P.L.L.C.	L07025	Dallas	02	12/20/19
Fort Worth	University of North Texas Health Science Center Fort Worth	L02518	Fort Worth	50	12/23/19
Houston	Spectracell Laboratories Inc.	L04617	Houston	20	12/17/19
Lancaster	Lancaster Regional Hospital L.P. dba Crescent Medical Center	L06847	Lancaster	05	12/17/19
Lubbock	Methodist Children's Hospital dba Joe Arrington Cancer Center	L06900	Lubbock	05	12/23/19

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

McKinney	Texas Oncology P.A. dba Texas Oncology	L06947	McKinney	09	12/19/19
Plano	Truradiation Partners Plano L.L.C.	L06617	Plano	12	12/16/19
Port Arthur	Motiva Enterprises L.L.C.	L05211	Port Arthur	24	12/20/19
Sugar Land	Methodist Sugar Land Hospital Cancer Center	L06232	Sugar Land	15	12/20/19
Throughout TX	Dynamic Earth L.L.C.	L06779	Allen	04	12/19/19
Throughout TX	The University of Texas Health Science Center at Houston	L02774	Houston	79	12/16/19
Throughout TX	Nuclear Scanning Services Inc.	L04339	Houston	33	12/19/19
Throughout TX	Texas Gamma Ray L.L.C. dba TGR Industrial Services	L05561	Houston	121	12/23/19
Throughout TX	One Subsea Processing Inc.	L05867	Houston	14	12/19/19
Throughout TX	Mistras Group Inc.	L06369	La Porte	32	12/18/19
Throughout TX	Phoenix Industrial Services 1 L.P.	L07015	La Porte	02	12/16/19
Throughout TX	Pioneer Inspection Services Inc.	L06553	Spring	04	12/17/19
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	215	12/19/19
Tyler	The University of Texas Health Science Center at Tyler	L04117	Tyler	65	12/16/19

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Beaumont	Metropolitan Cardiology P.A.	L06258	Beaumont	01	12/20/19
Corpus Christi	Citgo Refining and Chemicals Company L.P.	L06183	Corpus Christi	06	12/19/19
McKinney	West Park Surgery Center L.P. dba Medical City Surgery Center/McKinney	L05991	McKinney	02	12/20/19

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Big Spring	Big Spring Hospital Corporation dba Scenic Mountain Medical Center	L00763	Big Spring	61	12/23/19
Houston	Sayed Feghali Cardiology Association	L05403	Houston	05	12/17/19

TRD-202000149
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: January 15, 2020



Order Extending the Temporary Scheduling of FUB-AMB

The Acting Administrator of the Drug Enforcement Administration issued a temporary scheduling order to extend the temporary schedule I status of a synthetic cannabinoid methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate (other names: FUB-AMB, MMB-FUBINACA, AMB-FUBINACA), including its optical, positional and geometric isomers, salts, and salts of isomers. The schedule I status of FUB-AMB currently is in effect until November 4, 2019. This temporary order will extend the temporary scheduling of FUB-AMB for one year, or until the permanent scheduling action for this substance

is completed, whichever occurs first. This order was published in the *Federal Register*, Volume 84, Number 210, pages 58045-58047, and is effective November 3, 2019.

--Schedule I temporarily listed substances subject to emergency scheduling by the United States Drug Enforcement Administration.

No change.

TRD-202000143
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: January 15, 2020



Texas Department of Housing and Community Affairs

Notice of Public Hearing (Granada Terrace Apartments)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the South Houston Branch Library, 607 Avenue A, South Houston, Texas 77587 at 6:00 p.m. on February 24, 2020. The hearing is regarding an issue of tax-exempt bonds in an aggregate principal amount not to exceed \$16,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The Bonds will be issued as exempt facility bonds for a qualified residential rental project (the "Development") pursuant to section 142(a)(7) of the Internal Revenue Code of 1986, as amended (the "Code"). The Development will be known as Granada Terrace Apartments and will be located at 1301 Avenue A, South Houston, Harris County, Texas 77587. The initial legal owner and principal user of the Development will be Granada Terrace Apartments, LP, a Texas limited partnership, or a related person or affiliate thereof.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Liz Cline-Rew at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3227; and/or liz.cline@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Liz Cline-Rew in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Liz Cline-Rew prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Liz Cline-Rew, ADA Responsible Employee, at (512) 475-3227 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of section 147(f) of the Code.

<http://www.tdhca.state.tx.us/multifamily/communities.htm>

TRD-202000150
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 15, 2020



Notice of Public Hearing (Scott Street Lofts Apartments)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Smith Neighborhood Library, 3624 Scott Street, Houston, Texas 77004 at 6:00 p.m. on February 20, 2020. The hearing is regarding an issue of tax-exempt bonds in an aggregate principal amount not to exceed \$18,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The Bonds will be issued as exempt facility bonds for a qualified residential rental project (the "Development") pursuant to section 142(a)(7) of the Internal Revenue Code of 1986, as amended (the "Code"). The Development will be known as Scott Street Lofts Apartments and will be located at 1320 Scott Street, Houston, Harris County, Texas 77003. The initial legal owner and principal user of the Development

will be Scott Street Lofts, LP, a Texas limited partnership, or a related person or affiliate thereof.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Liz Cline-Rew at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3227; and/or liz.cline@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Liz Cline-Rew in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Liz Cline-Rew prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Liz Cline-Rew, ADA Responsible Employee, at (512) 475-3227 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of section 147(f) of the Code.

<http://www.tdhca.state.tx.us/multifamily/communities.htm>

TRD-202000152
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 15, 2020



Texas Department of Insurance

Company Licensing

Application for Jewelers Mutual Insurance Company, a foreign fire and/or casualty company, to change its name to Jewelers Mutual Insurance Company, SI. The home office is in Neenah, Wisconsin.

Application for Voya Insurance and Annuity Company, a foreign life, accident and/or health company, to change its name to Venerable Insurance and Annuity Company. The home office is in Des Moines, Iowa.

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-202000140
James Person
General Counsel
Texas Department of Insurance
Filed: January 15, 2020



Texas Department of Insurance, Division of Workers' Compensation

FY 2020 Research Agenda for the Workers' Compensation Research and Evaluation Group

General remarks and official action taken:

The commissioner of workers' compensation considers the Fiscal Year (FY) 2020 Research Agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance, Division of Workers' Compensation (DWC).

The Texas Labor Code requires the REG to conduct professional studies and research related to the operational effectiveness of the workers' compensation system, and to annually publish a workers' compensation research agenda.

DWC published the proposed research agenda in the November 29, 2019, issue of the *Texas Register* (44 TexReg 7466), soliciting public review and comment. DWC received no comments and no requests for a public hearing.

The commissioner adopts the FY 2020 Research Agenda for the Workers' Compensation Research and Evaluation Group, as follows:

1. Completion and publication of the 2020 Workers' Compensation Health Care Network Report Card (required under Insurance Code §1305.502 and Labor Code §405.0025).
2. An update of the 2018 "Setting the Standard," biennial report on the impact of the 2005 legislative reforms to the Texas workers' compensation system. This report presents results on the affordability and availability of workers' compensation insurance for Texas employers, and the impact of certified workers' compensation health care networks on medical costs, quality of care issues, return-to-work outcomes, and medical dispute resolution (required by Insurance Code §2053.012 and Labor Code §405.0025). The report is due on December 1, 2020.
3. An update of the 2018 biennial study to estimate employer participation in the Texas workers' compensation system (required by Insurance Code §2053.012 and Labor Code §405.0025). The report is due on December 1, 2020.

TRD-202000142
Nicholas Canaday III
General Counsel

Texas Department of Insurance, Division of Workers' Compensation
Filed: January 15, 2020

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Texas Lottery Commission

Scratch Ticket Game Number 2210 "\$100 FRENZY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2210 is "\$100 FRENZY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2210 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2210.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, MONEY BAG SYMBOL, STACK OF CASH SYMBOL, \$2.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2210 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
MONEY BAG SYMBOL	WINX2
STACK OF CASH SYMBOL	WIN\$100
\$2.00	TWO\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$1,000	ONTH
\$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2210), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2210-0000001-001.

H. Pack - A Pack of the "\$100 FRENZY" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back

of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration..

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$100 FRENZY" Scratch Ticket Game No. 2210.

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 "\$100 FRENZY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-two (22) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to either of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "Money Bag" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If the player reveals a "Stack of Cash" Play Symbol, the player wins \$100 instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-two (22) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-two (22) Play Symbols under the Latex Overprint on

the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-two (22) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-two (22) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have two (2) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "Money Bag" (WINX2) and "Stack of Cash" (WIN\$100) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "Money Bag" (WINX2) and "Stack of Cash" (WIN\$100) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

I. The \$100 Prize Symbol will always appear with the "Stack of Cash" (WIN\$100) Play Symbol.

J. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

K. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 05 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "\$100 FRENZY" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$100 FRENZY" Scratch Ticket Game prize of \$1,000 or \$30,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$100 FRENZY" 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 "\$100 FRENZY" 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 "\$100 FRENZY" 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 Ticket Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2210. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2210 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2	691,200	10.42
\$4	460,800	15.63
\$5	172,800	41.67
\$10	115,200	62.50
\$20	57,600	125.00
\$50	4,800	1,500.00
\$100	25,050	287.43
\$500	90	80,000.00
\$1,000	30	240,000.00
\$30,000	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 4.71. 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. 2210 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. 2210, 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-202000129
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: January 14, 2020



Public Utility Commission of Texas

Notice of Application for True-Up of 2017 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on January 2, 2020, for true-up of 2017 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Ganado Telephone Company, Inc. for True Up of 2017 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 50402.

The Application: Ganado Telephone Company, Inc. (Ganado Telephone) filed a true-up report in accordance with Finding of Fact Nos. 16 through 19 of the final Order in Docket No. 47683. In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Ganado Telephone received in Federal Universal Service Fund (FUSF) revenue by \$216,343 for calendar year 2017. The projected reduction in FUSF revenue was expected to be offset by \$62,330 in rate increases that Ganado Telephone has implemented in 2017, and \$154,013 from the Texas Universal Service Fund (TUSF). The final Order required a true-up of the actual 2017 revenue reductions. As a result of that true-up, Ganado Telephone now asserts it is due to refund the TUSF in the amount of \$126,382.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50402.

TRD-202000070

Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: January 8, 2020



Notice of Application to Adjust High Cost Support Under 16 TAC §26.407(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on January 8, 2020, to adjust the high-cost support received from the Small and Rural Incumbent Local Exchange Company Universal Service Plan without effect to current rates.

Docket Title and Number: Application of Cap Rock Telephone Cooperative, Inc. to Adjust High Cost Support under 16 Texas Administrative Code (TAC) §26.407(h), Docket Number 50416.

Cap Rock Telephone Cooperative, Inc. requests a high-cost support adjustment increase of \$547,522. The requested adjustment complies with the cap of 140% of the annualized support the provider received in the 12 months prior to the filing of the application, as required by 16 TAC §26.407(g)(1).

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 as a deadline to intervene may be imposed. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 50416.

TRD-202000086
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 10, 2020



Supreme Court of Texas

Order Amending Texas Rule of Civil Procedure 277

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9008

ORDER AMENDING TEXAS RULE OF CIVIL PROCEDURE 277

ORDERED that:


1. House Bill 7, enacted by the 85th Legislature, directs interested parties to “review the form of jury submissions” and to “make recommendations . . . regarding whether broad-form or specific jury questions should be required in suits affecting the parent-child relationship filed by” the Department of Family and Protective Services (“DFPS”). Act of May 30, 2017, 85th Leg., R.S., ch. 317, § 6 (H.B. 7) (codified at TEX. FAM. CODE § 105.002(d)).
2. The Task Force for Procedural Rules in Suits Affecting the Parent-Child Relationship filed by a Governmental Entity—appointed by the Court in Miscellaneous Docket No. 17-9070 to address this directive and other issues—recommended requiring specific jury questions in both private and DFPS-filed parental termination cases. The Task Force also drafted a pattern jury charge.
3. After consideration, the Court accepts the Task Force’s recommendation to require specific jury questions in both private and DFPS-filed parental termination cases and approves the following amendments to Rule 277 of the Texas Rules of Civil Procedure.
4. The amendments take effect May 1, 2020 and supersede *Texas Department of Human Services v. E.B.*, 802 S.W.2d 647 (Tex. 1990).
5. The amendments may be changed before May 1, 2020 in response to public comments. Written comments should be sent to rulescomments@txcourts.gov. The Court requests that comments be sent by April 1, 2020.
6. The Task Force’s pattern jury charge is referred to the Texas Pattern Jury Charges Family and Probate Committee (“PJC Committee”) for consideration. The PJC Committee should also consider the work of the Supreme Court Advisory Committee. The pattern jury charge approved by the PJC Committee should:

- a. submit a separate question on each individual statutory ground for termination of the parent-child relationship, TEX. FAM. CODE § 161.001(b)(1), as to each parent and each child;
- b. submit a separate question on whether termination of the parent-child relationship is in the best interest of the child, TEX. FAM. CODE § 161.001(b)(2), as to each parent and each child; and
- c. predicate the best-interest question on an affirmative answer to at least one termination-ground question.

7. The Clerk is directed to:

- a. file a copy of this order with the Secretary of State;
- b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- c. send a copy of this order to each elected member of the Legislature; and
- d. submit a copy of the order for publication in the *Texas Register*.

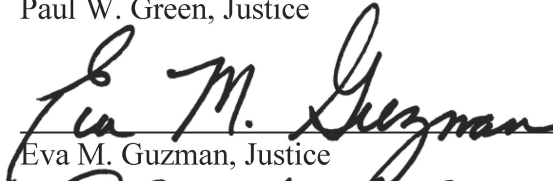
Dated: January 8, 2020



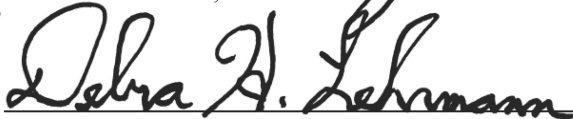
Nathan L. Hecht, Chief Justice



Paul W. Green, Justice



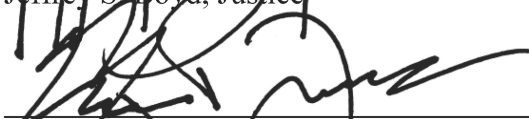
Eva M. Guzman, Justice



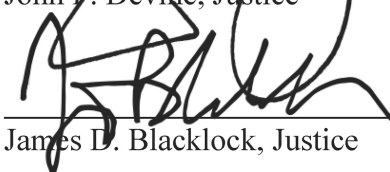
Debra H. Lehrmann, Justice




Jeffrey S. Boyd, Justice



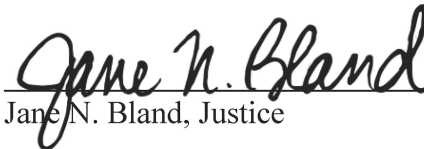
John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

RULE 277. SUBMISSION TO THE JURY

In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions. The court shall submit such instructions and definitions as shall be proper to enable the jury to render a verdict.

Inferential rebuttal questions shall not be submitted in the charge. The placing of the burden of proof may be accomplished by instructions rather than by inclusion in the question.

In any cause in which the jury is required to apportion the loss among the parties the court shall submit a question or questions inquiring what percentage, if any, of the negligence or causation, as the case may be, that caused the occurrence or injury in question is attributable to each of the persons found to have been culpable. The court shall also instruct the jury to answer the damage question or questions without any reduction because of the percentage of negligence or causation, if any, of the person injured. The court may predicate the damage question or questions upon affirmative findings of liability.

In a suit in which termination of the parent-child relationship is requested, the court shall submit separate questions for each parent and each child on (1) each individual statutory ground for termination of the parent-child relationship and (2) whether termination of the parent-child relationship is in the best interest of the child. The court shall predicate the best-interest question upon an affirmative finding of at least one termination ground.

The court may submit a question disjunctively when it is apparent from the evidence that one or the other of the conditions or facts inquired about necessarily exists.

The court shall not in its charge comment directly on the weight of the evidence or advise the jury of the effect of their answers, but the court's charge shall not be objectionable on the ground that it incidentally constitutes a comment on the weight of the evidence or advises the jury of the effect of their answers when it is properly a part of an instruction or definition.

Comment to 2020 change: Rule 277 is revised to require a jury question on each individual statutory ground for termination as to each parent and each child without requiring further granulated questions for subparts of an individual ground for termination. Rule 277 is also revised to require a separate question on best interest of the child as to each parent and each child that is predicated on an affirmative answer to at least one termination-ground question. The revisions supersede *Texas Department of Human Services v. E.B.*, 802 S.W.2d 647 (Tex. 1990).

IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 20-9009
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ORDER AMENDING TEXAS RULES OF CIVIL PROCEDURE 116 AND 117
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ORDERED that:

1. Senate Bill 891, enacted by the 86th Legislature, requires the creation of a website for publishing citation and directs the Court to establish procedures for the website. Act of May 27, 2019, 86th Leg., R.S., ch. 606, § 9.03 (S.B. 891, codified at TEX. GOV'T CODE § 72.034).
2. The Court approves the following amendments to Rules 116 and 117 of the Texas Rules of Civil Procedure. Rules 116 and 117 have been completely restructured and rewritten. Therefore, this order includes only a clean version of those rules as amended.
3. The amendments take effect June 1, 2020.
4. The amendments may be changed before June 1, 2020 in response to public comments. Written comments should be sent to rulescomments@txcourts.gov. The Court requests that comments be sent by May 1, 2020.
5. The Clerk is directed to:
 - a. file a copy of this order with the Secretary of State;
 - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

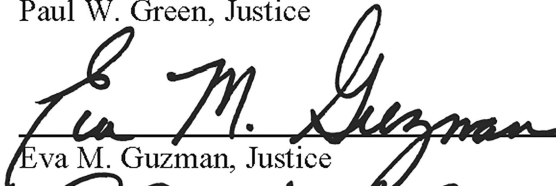
Dated: January 14, 2020



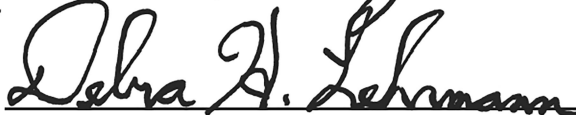
Nathan L. Hecht, Chief Justice



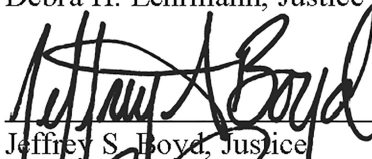
Paul W. Green, Justice



Eva M. Guzman, Justice



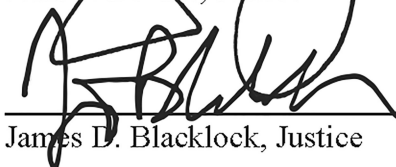
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



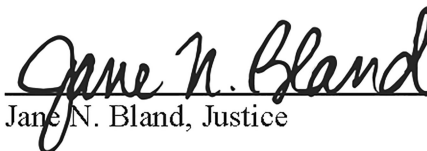
John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

RULE 116. SERVICE OF CITATION BY PUBLICATION

- (a) *Public Information Internet Website Defined.* “Public Information Internet Website” means the website developed and maintained under section 72.034 of the Government Code.

- (b) *Where to Publish.*
 - (1) Generally. Except as otherwise provided in (2), the citation must be served by publication in a newspaper under (c) and on the Public Information Internet Website under (d).

 - (2) When Newspaper Publication Not Required. The citation need not be published in a newspaper if:
 - (A) the party requesting citation files a Statement of Inability to Afford Payment of Court Costs under Rule 145;

 - (B) the total cost of the required publication exceeds \$200 each week or an amount set by the Supreme Court, whichever is greater; or

 - (C) the county in which the publication is required does not have any newspaper published, printed, or generally circulated in the county.

- (c) *Newspaper Publication.*
 - (1) Who Must Serve. The citation must be served by any sheriff or constable or by the clerk of the court in which the case is pending.

 - (2) Time for Publication. The citation must be published once each week for 4 consecutive weeks, and the first publication must be at least 28 days before the return is filed.

 - (3) Suits Not Involving Land Title or Real Estate Partition. In all suits that do not involve the title to land or the partition of real estate, the citation must be published in a newspaper in the county where the suit is pending.

 - (4) Suits Involving Land Title or Real Estate Partition. In all suits that involve the title to land or partition of real estate, the citation must be published in a newspaper in the county where the land, or a portion thereof, is situated.

(d) *Public Information Internet Website Publication.*

- (1) Who Must Serve. The citation must be served by the clerk of the court in which the case is pending.
- (2) Time for Publication. The citation must be published for at least 28 days before the return is filed.
- (3) Other Guidelines. The citation must be published in accordance with any other guidelines established by the Office of Court Administration.

Comment to 2020 change: Rule 116 is amended to implement section 72.034(d) of the Government Code.

RULE 117. RETURN OF CITATION BY PUBLICATION

- (a) *Return of Citation by Newspaper Publication.* If the citation was served by newspaper publication, the return must state how the citation was published, specify the dates of publication, be signed by the officer who served the citation, and be accompanied by an image of the publication.

- (b) *Return of Citation by Public Information Internet Website Publication.* If the citation was served by publication on the Public Information Internet Website, the return must specify the dates of publication and be generated by the Office of Court Administration.

TRD-202000141
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: January 15, 2020

◆ ◆ ◆
Texas Department of Transportation

Aviation Division - Request for Qualifications (RFQ) for Professional Engineering Services

The City of Uvalde, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Texas Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Uvalde; TxDOT CSJ No.: 2015UVLDE.

The TxDOT Project Manager is Robert Johnson, P.E.

Scope: Provide engineering and design services, including construction administration, to expand terminal apron.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is **19%**. The goal will be re-set for the construction phase.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Garner Field may include the following: runway rehabilitation and markings, taxiway rehabilitation and markings, construct taxiway for hangar access.

The City of Uvalde 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, project diagram, and most recent Airport Layout Plan are available online at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm> by selecting "Garner Field." 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.

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 February 18, 2020, 11:59 p.m. 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 Ann Pinder, Grant Manager. For technical questions, please contact Robert Johnson, 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-202000084
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: January 10, 2020

◆ ◆ ◆
Aviation Division - Request for Qualifications (RFQ) for Professional Engineering Services

The City of Kerrville and Kerr County, through their agent, the Texas Department of Transportation (TxDOT), intend to engage a professional engineering firm for services pursuant to Chapter 2254, Subchapter A, of the Texas Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below.

Current Project: City of Kerrville and Kerr County; TxDOT CSJ No.: 18HGKERRV. The TxDOT Project Manager is Ed Mayle.

Scope: Provide engineering and design services, including construction administration, to construct 10 - 12-unit hangar with associated pavement and hangar pavement markings.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is 16%. The goal will be re-set for the construction phase.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Kerrville Municipal/Louis Schreiner Field may include pavement rehabilitation and pavement markings.

The City of Kerrville and Kerr County reserve 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, project diagram, and most recent Airport Layout Plan are available online at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm> by selecting "Kerrville Municipal/Louis Schreiner Field." 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.

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 **February 14, 2020, 11:59 p.m.** 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 Ann Pinder, Grant Manager. For technical questions, please contact Ed Mayle, 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-202000122

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Filed: January 13, 2020

Texas Water Development Board

Applications for December 2019

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #21785, a request from the Sandy Land Underground Water Conservation District, P.O. Box 130, Plains, Texas 79355-0130, received on December 11, 2019, for \$725,000 in financial assistance from the Agricultural Water Conservation grant for approximately 10 water conserving irrigation systems.

Project ID #73880, a request from the Glidden Fresh Water Supply District No. 1, 200 Clayborne Street, Glidden, Texas 78943, received on December 30, 2019, for \$1,368,812 in financial assistance from the Clean Water State Revolving Fund to replace aging sewer lines.

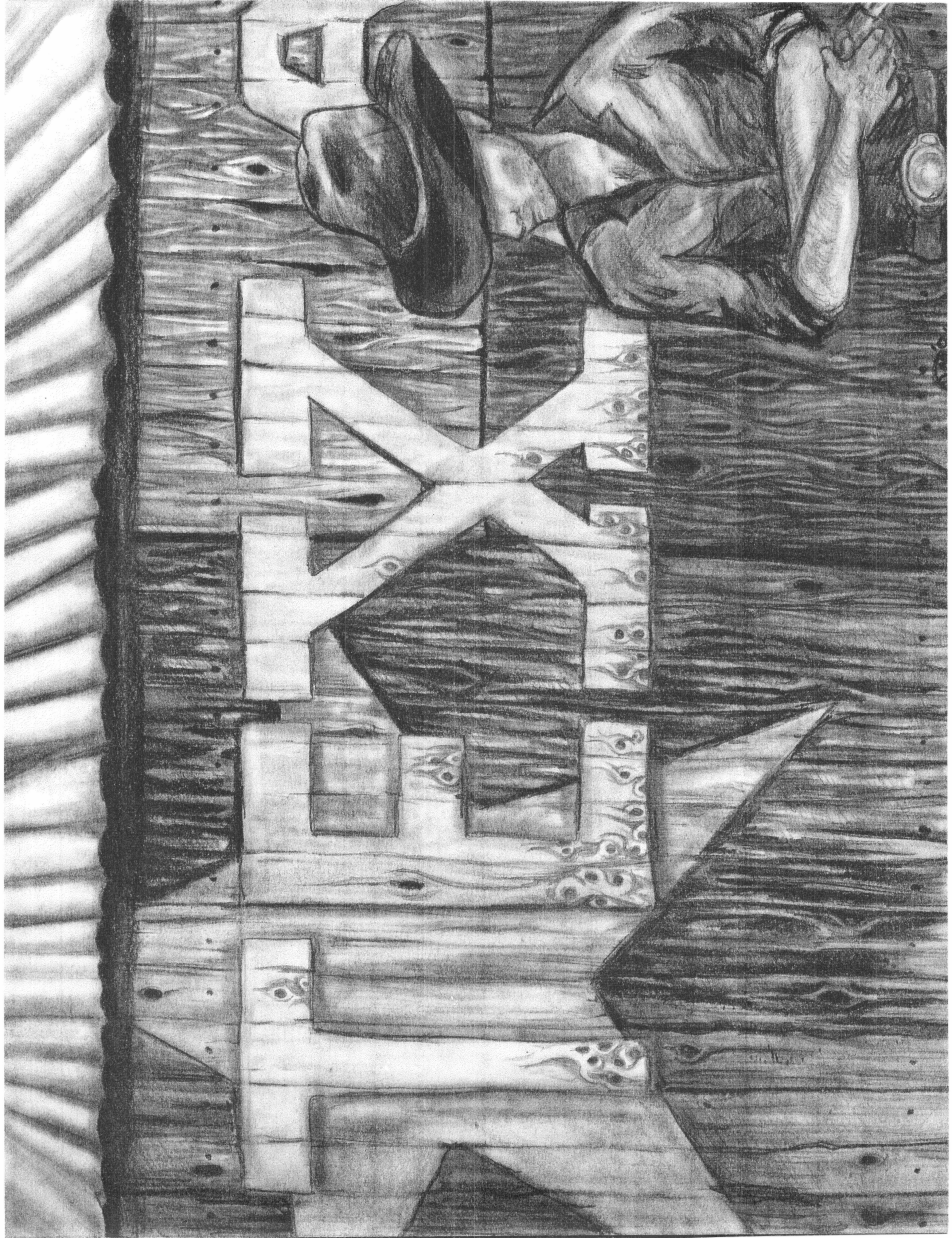
Project ID #62886, a request from the City of Blanco, P.O. Box 750, Blanco, Texas 78606-0750, received on December 30, 2019, for \$6,550,000 in financial assistance from the Drinking Water State Revolving Fund to refurbish and modernize the wastewater treatment process while treating THM concentration issues, flood proofing/raising facilities above 100 year flood event level, obtain new TCEQ discharge permit, and demolish abandoned components.

Project ID #21786, a request from Texins Lake, 137 Gateway Road, Pottsboro, Texas 75076, received on December 30, 2019, for \$300,000 in financial assistance from the Texas Water Development Fund to drill new water well and connect to existing system.

Project ID #73881, a request from the North Texas Municipal Water District, 501 East Brown Street, Wylie, Texas 75098-4406, received on December 31, 2019, for \$75,470,000 in financial assistance from the Clean Water State Revolving Fund for Rowlett Creek Regional Wastewater Treatment Plant expansion project.

TRD-202000078
Todd Chenoweth
General Counsel
Texas Water Development Board
Filed: January 9, 2020





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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